

1 WILLIAM C. HANES

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4 UNITED STATES DISTRICT COURT
5 SOUTHERN DISTRICT OF OHIO
6 WESTERN DIVISION

7 -----

8 DAVID FERGUSON, et al.,

9 Plaintiffs,

10 -vs- File No. C-1-02-039

11 RYDER AUTOMOTIVE CARRIER SERVICES, INC.,
12 et al.,

13 Defendants.

14 -----

15

16

17 Examination Before Trial of
18 WILLIAM C. HANES, taken pursuant to Notice under
19 the Federal Rules of Civil Procedure and Agreement,
20 taken at the Roycroft Inn, 31 South Grove Street,
21 East Aurora, New York, taken on February 12, 2003,
22 commencing at 9:07 A.M., before MARTIN S. WRIGHT,
23 CSR, Notary Public.

24

25

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hanes.dep.v1

9/16/2003

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1 APPEARANCES:

2 THOMAS R. KOUSTMER, ESQ.,
3 7 West 7th Street, Suite 1800,
4 Cincinnati, OH 45202,
5 Appearing for the Plaintiffs.

6 LARSON & LARSON,
7 BY: DAVID E. LARSON, ESQ.,
8 1300 Tomahawk Creek Parkway, Suite 310,
9 Leawood, KS 66211,
10 Appearing for the Defendants Commercial
11 Carriers, Inc. and Ryder Systems, Inc..

12 TAFT, STETTINIUS & HOLLISTER,
13 BY: CRAIG R. PAULUS, ESQ.,
14 425 Walnut Street, Suite 1800,
15 Cincinnati, OH 45202,
16 Appearing for the Defendant Hanes Supply.

17

18 (Whereupon, the following stipulations were
19 entered into by all parties.)

20 It is hereby stipulated by and between
21 counsel for the respective parties that the oath of
22 the Referee is waived, that filing of the
23 transcript are waived, and that all objections,
except as to the form of the questions, are
reserved until the time of trial.

24

25 W I L L I A M C. H A N E S , 51 Briggswood
26 Drive, Elma, New York, after being duly called and
27 sworn, testified as follows:

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1 EXAMINATION BY MR. KOUSTMER:

2

3 Q. Mr. Hanes, my name's Tom Koustmer. I represent Mr.
4 and Mrs. Ferguson, and your deposition's here today
5 by notice and agreement. I'm going to be asking
6 you some questions. If at any time you don't
7 understand one of my questions, just tell me and
8 I'm re-answer it, or, re-ask it --

9 A. Okay.

10 Q. -- or we'll get the Court Reporter to read it
11 back. It's my understanding that you are the
12 President of Hanes Supply, Inc., is that correct?

13 A. That's correct.

14 Q. Okay. Do you own Hanes Supply, Inc.?

15 A. Yes, I'm a hundred percent owner.

16 Q. Okay. And how long have you owned that?

17 A. I've owned the entire corporation, probably
18 1985ish.

19 Q. Okay. So, during the period of time in which we're
20 here on, 1994/1995, you were the owner of Hanes
21 Supply, Inc.?

22 A. That is correct.

23 Q. And you were also the President?

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- 1 A. That is correct.
- 2 Q. Okay. And what is your educational background?
- 3 A. Graduate of Canisius High School and graduate of
- 4 the University of Buffalo with a degree in civil
- 5 engineering.
- 6 Q. Okay. Did you go on to any other schooling after
- 7 your degree in civil engineering?
- 8 A. I took half of an MBA program but didn't complete
- 9 it. Time constraints were too difficult.
- 10 Q. Was that also at the University of Buffalo?
- 11 A. That's correct.
- 12 Q. What year did you get your civil engineering
- 13 degree?
- 14 A. 1980.
- 15 Q. And, so, where did you work between 1980 and 1985?
- 16 A. Hanes Supply.
- 17 Q. Did you buy Hanes Supply from someone?
- 18 A. Yes, a family corporation, company from my father,
- 19 Theodore Hanes.
- 20 Q. Now, you provided some safety cables to Commercial
- 21 Carriers, Inc., is that correct, in 1994/1995 time
- 22 frame?
- 23 A. Correct.

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1 Q. Okay. Can you tell me how that came about?

2 A. Commercial Carriers -- I'd like to make the record
3 straight of why we're talking about that.

4 Commercial Carriers, Delavan, Ryder, Murray Recon,
5 that's all considered one company, because they've
6 gone through a number of different gyrations, and
7 we've changed our computer system to state that.

8 So it used to be Ryder. It used to be Delavan.

9 It's -- you know, they've gone through a number of
10 different ownership changes and I just wanted to
11 make that clear at this point in time.

12 Q. Okay.

13 A. My recollection from 1994 was that from our history
14 they had bought some. We'll have to look at the
15 history of the -- how the cables evolved.

16 Q. Okay. I assume you're referring to some of these
17 documents that were given to me by your Counsel --

18 A. That's correct.

19 Q. -- yesterday, and then there was a couple he gave
20 me today, which I don't really understand. But why
21 don't we -- if we want, we'll just skip ahead. I
22 had them marked right there and we'll take a look
23 at them. Okay?

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- 1 A. Super.
- 2 Q. I got them marked Plaintiffs' BB, Plaintiffs' CC,
3 Plaintiffs' DD, Plaintiffs' EE, and then we're
4 going to skip, because we may have marked
5 Plaintiffs' FF in Mr. Terzian's file, Plaintiffs'
6 GG and Plaintiff HH, which are two documents
7 provided to me today from your Counsel. This -- is
8 this what you're referring to that you want the
9 look at?
- 10 A. Correct.
- 11 Q. And you've looked at these prior to your testimony
12 here today?
- 13 A. That's correct.
- 14 Q. Okay. Anything else you'd looked at prior to your
15 testimony?
- 16 A. We reviewed the entire sales history of -- of
17 Ryder. Ryder, Commercial.
- 18 Q. Okay. And are there documents that detail that
19 sales history?
- 20 A. It's computer.
- 21 Q. Okay. If I ask your Counsel in an interrogatory
22 request for production, you'll provide a sales
23 history of Ryder, Commercial, or all the companies

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1 you named, then he could request that from you and

2 that would be generated by computer?

3 A. From 1992, correct.

4 Q. Okay. Did you bring that with you today?

5 A. No, sir.

6 Q. Okay. But you reviewed it prior to your

7 deposition?

8 A. That's correct.

9 Q. Okay. Anything else you reviewed?

10 A. That was -- no.

11 Q. Okay. So, let's -- I'll give you these.

12 A. Mm hmm.

13 Q. And you were going to tell me -- I think I asked

14 you what you remember of how it came about that

15 Commercial Carriers, Inc. ordered safety cables

16 from your company.

17 A. Okay. In 1993, looks like some 3/8ths was --

18 cables were ordered that were yellow coated and it

19 was a little different design with turn buckles,

20 similar lengths, 152 inches, 90 inches, 95, 98.5

21 inches, so it looked like there were, you know,

22 five total -- excuse me, eight total cables that

23 were purchased.

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1 Q. Okay. And you're referring just on the front of
2 it?

3 A. This -- yeah, this is your Plaintiff DD.

4 Q. Okay. And, so, you're saying in 1993 was ordered
5 what?

6 A. Some 3/8ths cables that are copied to 7/16ths in
7 the yellow coated.

8 Q. And how long were those?

9 A. Lengthwise, they were 152 inches, 90 inches, and
10 98.5 inches.

11 Q. One of each or --

12 A. Four. Four of the first one.

13 Q. Okay.

14 A. And two and two.

15 Q. And two and two. Prior to that order, had you ever
16 met with anyone at Commercial Carriers, Inc. or any
17 of these companies you named and discussed with
18 them this order?

19 A. This -- I don't -- I don't -- I don't recall
20 discussing this order or I don't know how the sales
21 history of this evolved.

22 Q. Okay. What's the next one? Or what do you --

23 A. The next one that we can find from the sales

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10

- 1 history is -- looks like June of '94. It was
2 3/16ths cable. There were two pieces at 44 and a
3 half inches, then coated quarter inch, two pieces
4 at 3/16ths by 64 and a half inch.
- 5 Q. I'm sorry. Three pieces of what?
- 6 A. First item, number one, was two pieces of a 3/16ths
7 by 44 and a half. Item number two was two pieces
8 of 3/16ths by 64 and a half. Item number three was
9 3/16ths by 68 and a half, two pieces, and item
10 number four was four pieces of 3/16ths by 81 and a
11 half. That was back on, again, 1994.
- 12 Q. June of '94, all those were ordered?
- 13 A. It wasn't June. It was July. Seventh month. It
14 was the 7th.
- 15 Q. Okay. All of those were ordered on July 7, 1994, I
16 guess?
- 17 A. Yes. We shipped on the 7/8/94, invoiced on
18 7/11/94.
- 19 Q. Okay. Can you tell me from DD what the price of
20 these cables were?
- 21 A. The --
- 22 Q. I forgot to ask you?
- 23 A. They're about \$97 each.

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11

- 1 Q. And how about the ones that were ordered in July
2 7th of '94?
- 3 A. They were \$48, 50, 50, 52.
- 4 Q. And that's Exhibit BB?
- 5 A. BB. I'm going to October of '94. There were four
6 pieces of a one-eighth cable, PVC coated yellow by
7 133 inches. Those had threaded studs on each end.
- 8 Q. And what's the price of those?
- 9 A. Those are \$28 each.
- 10 Q. Okay.
- 11 A. And that was -- I remember taking that order
12 verbally from Mike Bevilacqua.
- 13 Q. Okay. Do you remember -- and do you remember those
14 other orders?
- 15 A. No.
- 16 Q. Okay. You don't remember the other order BB or
17 DD. Would you have been the one that's taken the
18 orders at this time?
- 19 A. It's possible. I'd have to look in the history.
20 But I don't remember those two.
- 21 Q. Or there's other people who take that --
- 22 A. There's other people on inside sales taking orders,
23 yeah.

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- 1 Q. How many people were in your Sales Department?
- 2 A. Inside sales at that time, there were probably
- 3 three or four people.
- 4 Q. Okay. How many engineers were working there?
- 5 A. Engineers at Hanes Supply?
- 6 Q. Yeah.
- 7 A. We don't -- the only engineer that has a formal
- 8 engineering training background is myself.
- 9 Q. Okay. Let me just go to one of these that I can go
- 10 through it and kind of --
- 11 A. Sure.
- 12 Q. -- understand it in case something comes up. When
- 13 you're looking at -- you got a separate document on
- 14 it, Number 64780, and I'm referring to Plaintiffs'
- 15 BB, and the description, you get the description of
- 16 what it is?
- 17 A. Mm hmm.
- 18 Q. Correct?
- 19 A. Correct.
- 20 Q. This on BB is one and three sixteen and then the
- 21 length is 44 and a half, right?
- 22 A. It's 3/16ths.
- 23 Q. Oh, I'm sorry. One and -- okay. 3/16ths. Good.

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- 1 44 and a half? What's 7 times 19 mean?
- 2 A. That's 17 strands with 19 wires in each strand.
- 3 Q. Okay. SSAC?
- 4 A. That refers to stainless steel aircraft cable.
- 5 Q. Okay. Then you've got nylon coated?
- 6 A. Mm hmm.
- 7 Q. To one fourth width, correct?
- 8 A. To one quarter inch width.
- 9 Q. Okay. Now, that's the front page. What's the
- 10 second page? What's that? The same? Another
- 11 order that day?
- 12 A. That's all part of that same work -- what we call
- 13 the work order.
- 14 Q. Okay. When it says same there, that would mean
- 15 SSAC?
- 16 A. The same description as the first item.
- 17 Q. Going to Plaintiff's CC, that's 1/8th inch, and
- 18 that's got GAC. That's the aircraft cable?
- 19 A. Galvanized aircraft cable.
- 20 Q. Yeah.
- 21 A. Aircraft cable.
- 22 Q. Does aircraft cable come not galvanized?
- 23 A. Typically not.

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- 1 Q. Okay. So, when you order it, it's galvanized?
- 2 A. That's correct.
- 3 Q. Can you order cable that's not galvanized?
- 4 A. We can order cable that's not galvanized. It's
- 5 called bright wire rope.
- 6 Q. Okay. PVC, is that vinyl coated?
- 7 A. Yeah.
- 8 Q. Is that what it means?
- 9 A. Right. Correct.
- 10 Q. Yellow means the coating, the color you make the
- 11 coating?
- 12 A. That's the color of the coating, correct.
- 13 Q. Okay. So, it comes in all different colors?
- 14 A. It's -- it's available in different colors,
- 15 correct.
- 16 Q. And it also comes in clear?
- 17 A. Clear is available.
- 18 Q. Okay. And clear, you can see through to the metal?
- 19 A. Well, depending on the -- what the surface
- 20 conditions are. If -- if it's been marred up or if
- 21 there's a lot of wear or brushing on the PVC, it
- 22 can get scuffed up.
- 23 Q. Right. But if it's not scuffed up, can you see

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1 through to the --
2 A. Correct.
3 Q. If it's yellow coating, you can't see through?
4 A. It's -- it's more difficult, yeah, very difficult,
5 depending on the shade of yellow.
6 Q. Okay. Do you remember what kind of shade this
7 yellow was or was ordered?
8 A. It was fairly opaque.
9 Q. Could you see through it?
10 A. I tend to think not.
11 Q. Okay. Now, you said the last one we discussed --
12 and I forget the number. Let me find the last one
13 we discussed. Is that what we --
14 MR. PAULUS: That's one we haven't discussed.
15 THE WITNESS: Yeah.
16 MR. PAULUS: I think it's this one.
17 MR. KOUSTMER: Was it July?
18 THE WITNESS: I -- the 3/8ths.
19 MR. KOUSTMER: October.
20 MR. PAULUS: Plaintiff's CC.
21 BY MR. KOUSTMER:
22 Q. Plaintiff's CC, you say you remember. You didn't
23 remember the first two that we discussed, BB and

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1 DD, but you remembered Plaintiff's CC. What did
2 you remember about that?

3 A. Basically, I remember the inside sales function,
4 that Mike Bevilacqua called up, he wanted these
5 things, these units in quickly, and they were
6 shipped -- the components that we purchased were
7 shipped in in a UPS Next Day Air fashion, so it was
8 a -- a very quick order. And then we, you know,
9 got the material in and they were delivered the
10 next day.

11 Q. Okay. Did he tell you why they needed them?

12 A. They were reviewing -- I believe I was out there,
13 in August, September time frame, to Delavan, and
14 they were reviewing different types of wire rope
15 assemblies for their top of their trucks.

16 Q. Okay. And is the prices marked on this one, too,
17 correct, \$28 each would be on CC? Correct?

18 A. Correct.

19 Q. Okay. And DD'S price was 97.25 each?

20 A. Mm hmm. Correct. Yep.

21 MR. PAULUS: You have the answer audibly. It's not
22 videotaped so they --

23 THE WITNESS: He can't hear me.

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1 MR. PAULUS: You have to say yes or no in an audible
2 answer.
3 BY MR. KOUSTMER:
4 Q. Okay. Now, on Plaintiff's Exhibit BB, the price
5 was between 48.34 and 52.94, correct --
6 A. Correct.
7 Q. -- for each one? Okay? Anything else I need to
8 know in reading these, how to read through one of
9 these?
10 A. No.
11 Q. Okay. Go ahead. You got some other ones. What's
12 that, Exhibit EE --
13 A. The last one.
14 Q. -- that your Counsel provided to me?
15 A. Correct.
16 Q. Okay.
17 A. This was ordered on the -- the day following --
18 following the DD. No, excuse me, not DD. CC. And
19 Mike had called up and, again, requested a UPS Next
20 Day Air shipment, and they decided to go to quarter
21 inch wire rope coated to 5/16ths with threaded
22 studs on each end.
23 Q. And what was the price of that?

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- 1 A. Those were 19.55 each.
- 2 Q. And, so, these are ordered when?
- 3 A. Probably shipped on the 4th. It was ordered --
- 4 shipped on the 5th, so it was ordered on the 4th.
- 5 Q. 4th of what month?
- 6 A. October of '94.
- 7 Q. Okay. And how many were shipped?
- 8 A. Four pieces.
- 9 Q. And you say you remember a conversation concerning
- 10 that shipment or not?
- 11 A. Yes. I -- I remember Mike calling up ordering
- 12 those.
- 13 Q. Okay. What did he --
- 14 A. And --
- 15 Q. Go ahead. What did he say?
- 16 A. We want to evaluate quarter inch coated to 5/16ths.
- 17 Q. Did he say what he was evaluating it for?
- 18 A. The -- the application was most likely the -- for
- 19 the safety cables on the top of their cabs.
- 20 Q. Okay. Now, today your Counsel's given me a couple
- 21 other documents, Plaintiff's Exhibit GG and HH.
- 22 Can you tell me what those are or mean?
- 23 A. Refer to the same work orders that we've talked

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- 1 about.
- 2 Q. Which one does GG refer to?
- 3 A. I can tell you by work order number, the order
- 4 document number would be the same.
- 5 Q. Okay.
- 6 A. Okay? That 073238 and 073238, they both match up,
- 7 but this is another screen that's available on our
- 8 computer that tells who the inside sales person was
- 9 and who ordered it from our customer.
- 10 Q. Okay. And which -- so, that number matches up with
- 11 Plaintiffs' CC, Plaintiff GG matches Plaintiff CC
- 12 by the top document number, correct?
- 13 A. Correct.
- 14 Q. And the document number being 073238. And, so,
- 15 this new document, Plaintiff GG, it says ordered by
- 16 Mike B. Inside sales person would be WCH. That
- 17 would be William C. Hanes?
- 18 A. That's correct.
- 19 Q. Okay. And, bill, that means the person's being
- 20 billed from W C Hanes, or what's this?
- 21 A. Yeah, just that bill, W C Hanes, that was just for
- 22 further information. The salesman -- I was not the
- 23 -- the chief salesman at that account, but I

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- 1 helped out. It's a gentleman, Gary Ranick,
2 R-a-n-i-c-k.
- 3 Q. Gary Ranick was the chief sales person for the
4 Ryder, Allied, Delavan, CCI account?
- 5 A. Yeah, he was -- he was an outside sales guy for
6 them.
- 7 Q. Okay. Is he still employed by your company?
- 8 A. Correct.
- 9 Q. Okay. Now, Plaintiff HH matches up with Plaintiff
10 EE, and that being document 073584, and that's the
11 shipment on 10 -- shipped 10/5, and that's for a
12 quarter inch assembly coated. What's assembly
13 coated mean? Is that the clear coating?
- 14 A. Quarter inch by 128 TS to TS, threaded stud to
15 threaded stud, wire rope assembly, coated, so it
16 means a -- it's a wire rope assembly.
- 17 Q. What's that being coated with, the PVC?
- 18 A. Yeah, coated to 5/16ths with PVC.
- 19 Q. Okay. When it says coated, does that mean it's
20 going to come out in the clear coating or you
21 pick -- who picks the color?
- 22 A. The customer picks the color.
- 23 Q. Okay. But you ordered this coated. It doesn't say

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- 1 a color. Or does it? That's what I'm getting at.
- 2 A. Yes, it does, coated yellow.
- 3 Q. In reviewing your records, did you ever sell CCI or
- 4 the companies that you mentioned any cable that
- 5 wasn't yellow, of this dimension on EE?
- 6 A. On the quarter inch coated to 5/16ths?
- 7 Q. Yes.
- 8 A. Review of our records no.
- 9 Q. So, it was all yellow?
- 10 A. Correct.
- 11 Q. Okay.
- 12 A. In what time frame up to?
- 13 Q. '94 to '95?
- 14 A. Right.
- 15 Q. And HH, which matches EE, shows again it was
- 16 ordered by Mike B and your WCH, inside sales
- 17 person, you billed him, correct?
- 18 A. I entered the order.
- 19 Q. Okay. Now, you said that you had been out there,
- 20 what was it, August and September of '94, August or
- 21 September?
- 22 A. Vaguely remember.
- 23 Q. Okay.

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- 1 A. Do not remember the specific details.
- 2 Q. But you remember being out there?
- 3 A. Somewhere in that time frame.
- 4 Q. Okay. What -- what do you remember about going out
- 5 there?
- 6 A. They -- Mike had called up and they were reviewing
- 7 options for wire rope assemblies.
- 8 Q. And these are for the -- the cables on the truck?
- 9 Did they tell you that?
- 10 A. Yes.
- 11 Q. Okay. What else did they tell you? What else did
- 12 Mike tell you that you remember?
- 13 A. He wanted different options on what was available
- 14 as far as wire rope and fittings.
- 15 Q. Okay. So had you been out there before to that
- 16 facility or was that your first time?
- 17 A. I might have been there at other times. But it
- 18 wasn't any type of set routine on a monthly or, you
- 19 know, quarterly basis.
- 20 Q. Okay. So when you went out there, what did you --
- 21 who'd you meet with?
- 22 A. Mike was the primary contact. I don't know if
- 23 there were some other gentlemen involved or not.

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1 There perhaps could have been.

2 Q. Okay. So Mike was definitely there and maybe some

3 others?

4 A. Yeah, possibly.

5 Q. Okay. Do you know if a Peter Terzian was there?

6 A. Can't remember.

7 Q. And did you take anything out with you to show them

8 or --

9 A. I don't recall. Might have been literature. I --

10 I -- I don't recall.

11 Q. Okay. But you knew going out that the reason he

12 wanted you to come out was to review different

13 options for a wire cable on the truck?

14 A. Wire, wire rope assemblies.

15 Q. Okay.

16 A. When I got there, then he started, you know,

17 mentioning about the truck.

18 Q. Okay. What -- what did he tell you that they

19 wanted?

20 A. They were evaluating different wire rope assemblies

21 for the -- for the truck.

22 Q. Okay. Did he show you a picture of a truck with

23 wire rope on it or did he show you a drawing or

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- 1 what did he show you or -- or did he just describe
2 it to you verbally?
3 A. I don't honestly recall.
4 Q. Okay. What did you tell him?
5 A. Basically, I told him what was available as far as
6 threaded studs and -- and, again, commercial
7 standard products.
8 Q. Okay. What products did you tell him were
9 available?
10 A. Well, anything that was -- that was in our catalog,
11 would have been -- would have been available.
12 It -- you know, it really is the customer's
13 discretion to pick what they -- they need to --
14 feel they need to use.
15 Q. Okay. Well, did you give him descriptions of the
16 different diameters that could be used or the
17 different type of material that could be used?
18 A. No. No. I -- he might have had cut sheets which
19 listed different cables and diameters with
20 different tensile -- tensile strengths. But,
21 again, it was their call to pick what they wanted
22 to utilize.
23 Q. Okay. Did you make any recommendation to him?

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- 1 A. No.
- 2 Q. Did you -- did he show you any drawings at the
- 3 time?
- 4 A. Boy, I don't recall.
- 5 Q. Okay. When you said you offered him threaded --
- 6 or, you talked about threaded studs versus --
- 7 A. Mm hmm.
- 8 Q. What?
- 9 A. Threaded stud was an option. It was an end
- 10 fitting.
- 11 Q. Okay. Did you explain what was good about threaded
- 12 studs?
- 13 A. Threaded stud is a threaded stud. It's swaged on
- 14 the wire rope.
- 15 Q. Okay. What was the other option instead of a
- 16 threaded stud?
- 17 A. For whatever reason, that was the path they chose
- 18 to go down.
- 19 Q. Okay.
- 20 A. Threaded studs.
- 21 Q. Are there -- was there another option given to
- 22 them?
- 23 A. I don't recall.

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- 1 Q. It might have been, but you don't remember or --
- 2 A. I don't remember.
- 3 Q. Okay. You don't know one way or the other?
- 4 A. No.
- 5 Q. How about the coating? My understanding, you could
- 6 have nylon coating or vinyl coating, correct?
- 7 A. Those are two options.
- 8 Q. Who chose the coating?
- 9 A. I told them what was available. It was -- it was
- 10 their call.
- 11 Q. Did you make a recommendation as to the coating?
- 12 A. I don't recall.
- 13 Q. So, you don't -- you don't know if you did one way
- 14 or the other?
- 15 A. No.
- 16 Q. So you might have, but you don't recall it?
- 17 A. I don't recall making a recommendation. I don't
- 18 recall it.
- 19 Q. Okay. What's the difference between vinyl and
- 20 nylon?
- 21 A. Vinyl is a plastic and nylon is a nylon material.
- 22 Q. Okay. Which is more expensive?
- 23 A. Nylon's slightly more expensive.

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- 1 Q. Okay. Which would better protect the metal on the
2 inside?
- 3 A. The surface isn't damaged, either one should do a
4 fine job.
- 5 Q. What if the surface gets damaged?
- 6 A. The surface is damaged, either product, you know,
7 it -- I'd have to review specifications on, you
8 know, the specific properties between nylon and
9 PVC.
- 10 Q. Okay. So you don't know?
- 11 A. I don't have that off the top of my head.
- 12 Q. Okay. Do you know which is easier to damage?
- 13 A. I would say that probably PVC might be a little bit
14 softer than nylon.
- 15 Q. So, how long did this meeting, if you remember,
16 last in September?
- 17 A. Maybe a half hour.
- 18 Q. At this meeting, was the choice made of what
19 material was going to be used?
- 20 A. No. They were evaluating internally.
- 21 Q. Okay. So, you left there, correct, without an
22 order of any kind?
- 23 A. I don't believe, no, I didn't get an order.

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- 1 Q. Okay. And when's the next time that you meet with
2 Mike B or hear anything from Commercial Carriers,
3 Inc. or any of their affiliated companies?
- 4 A. To the best of my recollection was the October time
5 frame that we talked about.
- 6 Q. Okay. And that would be the -- that would be this
7 order, Plaintiff EE, where they ordered four of
8 them?
- 9 A. No, obviously, it's the --
- 10 Q. You tell me which one.
- 11 A. This particular one here, which is order number
12 073538.
- 13 Q. That's Plaintiffs' CC?
- 14 A. CC.
- 15 Q. Okay. And that one's for the -- an eighth of an
16 inch, right?
- 17 A. Correct.
- 18 Q. Now, an eighth of an inch, do you know what the --
19 oh, strike that. I'm going to show you something
20 else. All right. Plaintiff Exhibit U, which
21 everyone's got, can you identify what that is?
- 22 A. It's a catalog cut from our catalog.
- 23 Q. Did you give that to them, to Commercial Carriers

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1 in '94 or '95, or you don't remember or what?

2 A. They might have had our general catalog. This --

3 this was something that was readily available. It

4 gave the specifications on cable. That's me.

5 Excuse me for a second.

6 MR. PAULUS: Can we go off the record?

7 (Off the Record Discussion)

8 BY MR. KOUSTMER:

9 Q. Okay. Are we ready from the break?

10 A. Sure. Yeah.

11 Q. Looking at -- Plaintiff's U's from your catalog?

12 A. Our current catalog.

13 Q. Okay. Did you have something similar to that in

14 '94, '95?

15 A. We had catalogs from that time frame.

16 Q. Do you have any of those catalogs left?

17 A. There's -- yes, there's some available.

18 Q. Okay. I'll probably request one from your Counsel

19 on discovery.

20 A. Not a problem.

21 Q. Its got starred here, vinyl coated galvanized

22 aircraft cable. That was what was used to make the

23 cables after October of '94, correct?

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- 1 A. Vinyl coated galvanized aircraft cable, correct.
- 2 Q. Okay. And they were a quarter of an inch in
- 3 diameter, correct?
- 4 A. Correct.
- 5 Q. And that is 7,000 pound, what, breakage? Is that
- 6 what it says?
- 7 A. Minimum breaking strength, 7,000 pounds.
- 8 Q. Okay.
- 9 A. Mm hmm.
- 10 Q. The other ones that were ordered the couple days
- 11 beforehand, what were they? They were the eighth
- 12 of an inch?
- 13 A. Correct.
- 14 Q. Okay. And those had a 2,000 pound breakage?
- 15 A. Correct.
- 16 Q. Did Mike B or anybody at Commercial Carriers ask
- 17 your advice on the minimum OSHA standards for
- 18 cables, safety cables?
- 19 A. No.
- 20 Q. Okay. Did you provide them that information?
- 21 A. No.
- 22 Q. Did you know it at the time that you sold it to
- 23 them?

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- 1 A. I was not familiar with the exact specification.
- 2 Q. So, after your -- so, I'm clear, after your meeting
- 3 with them in October, August or September --
- 4 A. Mm hmm.
- 5 Q. -- of '94, they ordered two different types of
- 6 cables from you? The first was for the eighth of
- 7 an inch, correct --
- 8 A. Yes.
- 9 Q. -- diameter, and the next was for a quarter inch
- 10 diameter --
- 11 A. Correct.
- 12 Q. -- correct? Were they both of the -- everything
- 13 else the same, just the difference in diameter?
- 14 A. Studs were different.
- 15 Q. Okay. What were the difference in the studs?
- 16 A. Smaller cable would have a smaller threaded stud.
- 17 Q. Okay. Did you ever discuss with Michael B how
- 18 they're going to attach them to the -- to the
- 19 trailers or the trucks?
- 20 A. He -- he probably -- probably went down the -- the
- 21 -- the stud viewpoint to insert them through a
- 22 post.
- 23 Q. Okay. Did he tell you that or is that just

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- 1 something you surmised by what they were ordering?
- 2 A. That's -- it was -- I can't recall. I -- that must
- 3 have been their design criteria.
- 4 Q. Okay. When you went out there for the half an hour
- 5 meeting, did you walk outside and look at a truck
- 6 or trailer?
- 7 A. It's possible.
- 8 Q. You don't remember?
- 9 A. I don't exactly remember, no.
- 10 Q. Did you give them the stainless steel option?
- 11 A. They requested galvanized. Stainless was available
- 12 also.
- 13 Q. When you went out there, did you discuss stainless
- 14 versus galvanized?
- 15 A. No.
- 16 Q. Did they ask you about it?
- 17 A. I don't recall.
- 18 Q. Okay. What's the difference between stainless and
- 19 galvanized?
- 20 A. Stainless has a lower tensile strength but it's
- 21 more corrosion resistant.
- 22 Q. When you galvanize something, does that make it
- 23 more brittle?

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1 MR. LARSON: Object to the form.
2 THE WITNESS: Too vague.
3 BY MR. KOUSTMER:
4 Q. Okay. Let me show you what's marked as -- well,
5 marked as Exhibit -- Plaintiff's Exhibit S. Are
6 these the order forms for -- well, you identify
7 what Plaintiff's S is.
8 MR. PAULUS: Look all the way through it.
9 THE WITNESS: Excuse me?
10 MR. PAULUS: I just wanted to look at that one.
11 Thanks.
12 THE WITNESS: Mm hmm.
13 MR. PAULUS: Okay.
14 THE WITNESS: Those are purchase orders from Commercial
15 and our corresponding work orders and invoices.
16 BY MR. KOUSTMER:
17 Q. Okay. And that has to do with the cables during
18 this period of time, 1994, 1995, is that correct?
19 A. Correct.
20 Q. So what was eventually ordered was the quarter inch
21 yellow cable, correct?
22 A. Correct.
23 Q. Okay. Do you remember seeing any of these as they

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- 1 left your place to go over there?
- 2 A. On occasion.
- 3 Q. Okay. We have the cable, not the original cable,
- 4 but a cable given to us by my client from
- 5 someone -- I forget the guy's name. Everybody
- 6 wants to depose him, but I forget his name. Okay?
- 7 The -- what I'm getting at is it's -- did the
- 8 coating go up to the -- to the metal part?
- 9 A. As close as possible.
- 10 Q. Okay. Can -- can it be made where there's like a
- 11 quarter inch or something that the coating doesn't
- 12 go all the way?
- 13 A. That could occur.
- 14 Q. Okay. But there, it -- in this case, they were
- 15 ordered to go up to the metal?
- 16 A. Our fabrication procedure is to have the plastic as
- 17 close to the switch fitting as possible.
- 18 Q. Okay. So, at your place, you ordered the wire and
- 19 then you installed the vinyl coating?
- 20 A. No.
- 21 Q. Okay. What do you do?
- 22 A. We ordered the wire rope, you know, PVC coated.
- 23 That's one option.

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- 1 Q. Okay.
- 2 A. Or you can order the wire rope and have it PVC
- 3 coated afterwards.
- 4 Q. And -- and in this case, what did you do?
- 5 A. Probably ordered the rope already PVC coated.
- 6 Q. Okay.
- 7 A. Possibly. Or might have had it coated, also.
- 8 Either way.
- 9 Q. Okay. And then, what do you do before you then
- 10 sell it to CCI or any of their companies?
- 11 A. We assemble the wire rope assembly.
- 12 Q. Assembly, okay. So you attach the metal parts, the
- 13 swivel?
- 14 A. Not the swivel. The threaded stud.
- 15 Q. Okay. You attach the threaded stud, and it's your
- 16 policy to attach it up to the -- as close as
- 17 possible to the vinyl, correct?
- 18 A. Correct.
- 19 Q. So, when you cut the rope as it's coming into your
- 20 assembly plant, you cut and have to take off some
- 21 of the vinyl to attach the metal stud, right?
- 22 A. That's correct.
- 23 Q. Okay. And then you get the length that Hanes

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- 1 Supply asked for and then ship them out, correct?
- 2 A. Not that Hanes Supply asked for.
- 3 Q. I'm sorry. CCI asked for.
- 4 A. Correct.
- 5 Q. Okay. I'll show you Exhibit T, which is a mill
- 6 test certificate, a bunch of them that were
- 7 produced in discovery by your Counsel, and I don't
- 8 think you got it, but you might have it in
- 9 discovery.
- 10 MR. LARSON: I do have a note about mill certificates
- 11 here.
- 12 MR. KOUSTMER: Yeah.
- 13 BY MR. KOUSTMER:
- 14 Q. Can you explain what those are?
- 15 A. These are mill test certificates from one of our
- 16 manufacturers that we deal with.
- 17 Q. Okay. And they are -- they test -- what type of
- 18 tests are they?
- 19 A. It's a certificate on the specifications of the
- 20 wire rope.
- 21 Q. And what are they testing, that the specifications
- 22 are correct or what?
- 23 A. They're testing that the -- that the wire rope

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- 1 meets the specification.
- 2 Q. Okay. What specification's that?
- 3 A. Typically mill specs.
- 4 Q. Are any of those sheets that were produced -- I
- 5 think I got them all -- related to this order in
- 6 '94, '95 for CCI or any of the Ryder, Allied
- 7 companies?
- 8 A. We could have utilized some from this mill for this
- 9 quarter inch -- this particular mill for the
- 10 quarter inch wire rope assemblies.
- 11 Q. Now, there's other than quarter inch enclosed in
- 12 that exhibit, are there not?
- 13 A. That's correct.
- 14 Q. So it's just something that was produced that it
- 15 could have been, but we're not sure if it was or
- 16 not?
- 17 A. We don't know the exact -- not having the sample,
- 18 don't know the exact manufacturer.
- 19 Q. Okay. We can't go back and determine that, the
- 20 mill test certificates for that?
- 21 A. No.
- 22 Q. Okay.
- 23 A. Sample's gone.

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- 1 Q. Right. And I did notice here there was a -- very
2 back, almost all of them are type of core, steel
3 core, and then it says coating galvanized, and then
4 the last two, there's no coating. Does that mean
5 that it wasn't galvanized? These weren't
6 galvanized?
- 7 A. These were a grade of stainless, a Type 304
8 stainless.
- 9 Q. Okay. The next one is also a stainless?
- 10 A. That's correct.
- 11 Q. Okay. Stainless is not galvanized, right?
- 12 A. No.
- 13 Q. Now, did you ever go back out to Commercial
14 Carriers, Inc. after the order came in in October
15 and all the orders started coming in in what's been
16 marked as Plaintiffs' Exhibit S and discuss with
17 them the choice that was made?
- 18 A. Not to my recollection.
- 19 MR. LARSON: Can you repeat the question?
- 20 BY MR. KOUSTMER:
- 21 Q. Did you ever go back out to CCI , Commercial -- did
22 you ever go back out to Commercial Carriers, Inc.
23 and discuss with them the choice that was made

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1 after October when the order came in?

2 A. No.

3 Q. Did you ever have any further discussions with Mike

4 B or anyone at Commercial Carriers, Inc. about the

5 safety cables after the one meeting?

6 A. I don't recall any.

7 Q. Okay. In your interrogatories that you answered,

8 you state that in approximately 1999 Commercial

9 Carriers --

10 A. Oh, well, yeah. Yeah. Yeah.

11 Q. Okay. Up to '99, you didn't have any other meeting

12 with them, is that what you're saying?

13 A. Yeah, I thought you were talking about the '95 --

14 '94/'95 time frame.

15 Q. I was. That's fine.

16 A. Yeah.

17 Q. Okay. The next time had you a talk with them was

18 in 1999?

19 A. Was somewhere in that time frame, '99, they made --

20 they decided to change the design of the cables.

21 Q. Okay. And what did they change it to?

22 A. They went to a fully threaded eye bolt half inch by

23 four and a half, with a -- a thimble, and then

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1 quarter inch cable PVC coated. And I believe the
2 coating was changed to -- I'd have to review the
3 records to see when the coating was changed to a
4 clear by them.

5 MR. LARSON: Can we specify who "they" is?

6 THE WITNESS: I don't know if Mike was involved at the
7 time. They have a new guy in Purchasing, Ken
8 Hamm. He might have been involved. Might have
9 been an engineer. I can't remember the people.

10 BY MR. KOUSTMER:

11 Q. Let me show you what's been marked as Plaintiffs'
12 Exhibit I. As you look at the one with the cars in
13 it, several pictures of cars, was the design change
14 as it looks on the upper -- is that what you're
15 talking about, the upper part of the post?

16 A. Correct.

17 Q. Okay. So, that's the eye bolt, thimble, quarter
18 inch PVC, coated clear, correct?

19 A. I don't know what exact time frame the clear
20 started.

21 Q. Okay. But that was the design it was changed to,
22 correct?

23 A. Correct.

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- 1 Q. Okay. Have there been any other design changes
2 that were made that you know of that were ordered
3 from Hanes Supply?
4 A. That were ordered from Commercial Carriers?
5 Q. Yeah. By Commercial Carriers, Allied, Ryder or
6 anyone in that group.
7 A. Any other design changes? Such as?
8 Q. Different specifications. Different diameter.
9 Different material. Different coating.
10 A. The only difference is the color of the coating
11 that I -- that I can recall.
12 Q. Okay. Let me show you what's marked as -- oh, we
13 can go right off of I. On I, on the bottom one?
14 A. Mm hmm.
15 Q. There seems to be a gap between where the coating
16 starts and where the -- what do you call that, stud
17 or --
18 A. Threaded stud.
19 Q. Threaded stud?
20 A. Yep.
21 Q. Okay. Was that requested at any time?
22 A. I don't believe so.
23 Q. Okay.

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- 1 A. But one thing to consider during the manufacturing
2 process is that you got metal flow, and it's not an
3 exact science as far as how the metal will flow.
- 4 Q. Okay. But you try and get the coating up to -- to
5 the metal stud?
- 6 A. Yes. We try to get as close as possible.
- 7 Q. Okay. Have Commercial Carriers or Allied or Ryder
8 ever ordered any stainless steel nylon coated cable
9 from you?
- 10 A. No, sir.
- 11 Q. Okay.
- 12 A. Looking at this exhibit with the way that is swaged
13 on, I don't believe that's a Hanes Supply product.
- 14 Q. Okay.
- 15 A. I really don't, because of the -- the flashing on
16 the swage, and that the diameter is the same here
17 as it is here, and I don't think -- that's possibly
18 not our product. We would never put something out
19 there, I don't believe, that -- that has that type
20 of excessive flashing.
- 21 Q. It might not be your product?
- 22 A. Might not be from -- our product.
- 23 MR. LARSON: Which photograph are you referring to?

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1 MR. KOUSTMER: I.

2 MR. PAULUS: The photograph that shows a single stud is
3 what he's pointing at.

4 BY MR. KOUSTMER:

5 Q. I gave it to you, basically, to ask you about the
6 -- that this was a different design started
7 sometime in 1999?

8 A. Mm hmm.

9 Q. I don't know if your people made that design or
10 not. But I'm just asking if that's a visual of
11 the design you described. And also this gap.

12 A. Mm hmm.

13 Q. Okay. I might have asked you this, but let me ask
14 you again. Did they ever order stainless steel
15 nylon coated from you?

16 A. Not to -- not to the best of my recollection.

17 Q. Okay. We got Plaintiffs' Exhibit V here which
18 shows -- from another company, Allied's ordered
19 some, and what they're ordering there is quarter
20 inch nylon coated stainless steel threaded stud.
21 Correct?

22 A. That's correct. By ten feet.

23 Q. Okay. Was that one of the options that you gave

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- 1 them when you met with them?
- 2 A. It was their choice. They were -- it's their
- 3 choice to utilize the material they felt was
- 4 appropriate.
- 5 Q. Okay. Just so I'm -- just so I'm clear, because
- 6 there's some confusion on this point. But your
- 7 testimony is that Commercial Carriers, Inc. in 1994
- 8 when they began ordering these safety cables from
- 9 you --
- 10 A. Mm hmm.
- 11 Q. -- they chose the material, not you, correct?
- 12 A. That's correct.
- 13 Q. Okay. They chose the specifications for the
- 14 material, not you?
- 15 A. That's correct.
- 16 Q. They chose the coating for the material, not you?
- 17 A. Correct.
- 18 Q. Okay. And when I refer to you, I refer to you or
- 19 anyone --
- 20 A. At Hanes Supply.
- 21 Q. -- or anyone in your company, Hanes Supply?
- 22 A. Correct.
- 23 Q. And when I refer to they, I'm referring to

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1 Commercial Carriers, Inc., Allied and their
2 companies. Okay? So, it was all their decision of
3 what material, specifications for that material and
4 coating to put on that material, is that correct?

5 MR. LARSON: Let me simply object to the form of the
6 question, that you're lumping Allied in to CCI in
7 1994 -- 1994, because there was no relationship at
8 that time.

9 MR. PAULUS: I also wanted to clarify that he may not
10 be the -- he's not here in this deposition today
11 as the 30(b)5 witness for Hanes Supply, though he
12 may later be designated on certain subjects, if we
13 choose to have that deposition.

14 BY MR. KOUSTMER:

15 Q. This order came through you, correct?

16 A. I took the order from Mike Bevilacqua.

17 Q. Okay.

18 MR. PAULUS: Which order are you referring to?

19 MR. KOUSTMER: I'm referring to the -- both the sample
20 they ordered -- on what was that? -- 10/5, and
21 then subsequent, when they started ordering them
22 in quantity.

23 THE WITNESS: Mm hmm.

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- 1 BY MR. KOUSTMER:
- 2 Q. That was through you, correct?
- 3 A. Correct.
- 4 Q. Anyone else dealing with them as far as this order
- 5 goes, other than yourself?
- 6 A. They could have, you know, put other orders in with
- 7 other outside -- inside sales guys.
- 8 Q. Did anyone go out with you to this meeting?
- 9 A. No.
- 10 Q. Okay. To your knowledge, did anyone at your
- 11 company give them advice or recommendation on what
- 12 type of material to use, what coating to use, what
- 13 diameter to make the safety cable, whether it be
- 14 PVC, nylon, galvanized steel, stainless steel? Did
- 15 anyone in your company make a recommendation to
- 16 them?
- 17 A. No.
- 18 Q. Okay. So, you're saying that Commercial Carriers,
- 19 Inc. was the one that picked this design and also
- 20 is the one that picked the specifications for the
- 21 material to be used in the design?
- 22 A. That's correct.
- 23 Q. Okay. Your company, Hanes Supply, Inc., had

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1 nothing to do with that other than to take the
2 order, is that correct?

3 A. We told them what was commercially available in
4 threaded studs, and they designed what they felt
5 was appropriate.

6 Q. Did you give them any advice as to how long the
7 material, different material would last?

8 A. No.

9 Q. Okay. Did they tell you when you went out there or
10 at any other time, Mike B or anybody from
11 Commercial Carriers, Inc., did they tell you we
12 want these safety cables to last the life of our
13 trailer, which is approximately ten years?

14 A. No.

15 Q. Okay. Did you know how long these safety cables
16 were supposed to last?

17 A. No.

18 Q. Did you give them any instructions on replacement
19 of them?

20 A. The instructions would be the standard warnings on
21 our work order invoices.

22 Q. Okay. So, just so we're clear, the only
23 instruction you gave them would be this standard

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1 warning we're looking at on Exhibit S at the
2 bottom, which says -- do you want to read it or
3 I'll read it?
4 A. You can read it.
5 Q. Wire rope products, slings, and lifting equipment
6 will break if abused, misused or overused, period.
7 Regular inspection before and after use is
8 necessary, period. Consult industry
9 recommendations and standards before using. Any
10 and all returns of any article may be made only
11 upon the consent of the seller. Upon any return
12 consented to seller, seller reserves the right to
13 charge buyer a reasonable restock charge.
14 MR. PAULUS: Can I see this a second? It looks like
15 there's a word cut off here. Because on the copy
16 on the left margin of the page is cut off. It says
17 regular inspection on the end of one line, the next
18 line starts with tenance.
19 MR. KOUSTMER: You provided them to me.
20 MR. PAULUS: Sorry about that. We'll --
21 MR. KOUSTMER: They're not mine.
22 MR. PAULUS: We'll find these. Actually, I think these
23 were key punched. These are the ones you got from

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1 CCI.

2 MR. KOUSTMER: Oh.

3 MR. PAULUS: But --

4 MR. KOUSTMER: Somebody provided them to me.

5 MR. PAULUS: Right.

6 MR. KOUSTMER: I don't -- Mr. Ferguson doesn't have

7 those. He didn't design them, build this.

8 MR. PAULUS: Okay. What's your question?

9 BY MR. KOUSTMER:

10 Q. Okay. That's the only warning that you gave?

11 A. That's our standard warning.

12 Q. Okay. Did you give any other instructions about

13 longevity of the cables?

14 A. No.

15 Q. All right. Did you give them any type of written

16 material with -- when you sold them the cables as

17 to maintenance or longevity or anything else?

18 A. No.

19 Q. Okay. Did you give them -- it refers in here to

20 industry recommendations and standards. Did you

21 give them any industry recommendations or

22 standards?

23 A. No. That is put in there to -- because we deal

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1 with a lot of different industries, people have to
2 take it upon themselves to see what is applicable
3 to their industry.

4 Q. Okay. When -- strike that. So when you sold them
5 the cables, you didn't give them anything in
6 writing, other than the invoice and the bill,
7 correct?

8 A. Correct.

9 Q. Okay. I'll show you Exhibit A which has previously
10 been marked. You knew when you sold them that they
11 were going to be used to hang like this, as a
12 safety cable between two posts on the top of a
13 trailer and a truck?

14 A. The design concept was the post with cables.

15 Q. You knew that was going to happen, correct?

16 A. More or less.

17 Q. Yeah. Did you tell them anything about how tight
18 they should be?

19 A. No.

20 Q. Okay. Does it make a difference if they're loose
21 or tight as far as wear and tear on them?

22 A. Straight line would -- would -- my opinion, would
23 probably be better. But, it's -- it's really --

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1 again, it's the discretion of the Commercial
2 Carrier how they want to design the thing.
3 Q. Okay. Did you tell them anything or give them any
4 warning or anything in writing that you have to
5 keep the -- you have to tighten these things down
6 every so often?
7 A. No.
8 Q. I think -- okay. I think Plaintiffs' Exhibit G,
9 that shows the design in 1999, correct?
10 A. '99 to 2000 time frame.
11 Q. Okay. When they -- when they asked for a change in
12 the design, did they tell you why?
13 MR. LARSON: Object to the form as to "they." They is
14 ambiguous.
15 BY MR. KOUSTMER:
16 Q. Who contacted you about the design change in '99,
17 2000, around there?
18 A. I'd have to review the records, but my guesstimate
19 is probably Purchasing, Ken Hamm.
20 Q. Okay. Purchasing at the same place as CCI was, but
21 it might not be CCI? I think that's what
22 co-counsel's getting at, is a different entity?
23 MR. LARSON: Probably the same location?

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1 THE WITNESS: Yeah. Yeah. They're out in West Seneca
2 now.
3 BY MR. KOUSTMER:
4 Q. They moved?
5 A. Yeah.
6 Q. Okay. So, the purchasing history, had you sold
7 them any after '95?
8 A. Yeah, it was an ongoing sale. They'd order; we'd
9 ship.
10 Q. Okay. So that they were being sold through '96 and
11 '97?
12 A. I believe so, yes.
13 Q. Okay. Then in '99, you're contacted by someone and
14 you believe that was someone in Purchasing?
15 A. It -- I'd have to review it.
16 Q. Okay.
17 A. Yeah, I remember going there, but I don't remember
18 all the individuals. Just wasn't there because I
19 do recall an engineer at that that wanted a fully
20 threaded eye bolt, which we did come up with for
21 them.
22 Q. Okay. And that was in 1999 or 2000?
23 A. I'm not sure.

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- 1 Q. Okay. When this person you talked to wanted a
2 fully threaded eye bolt, did they give you the
3 reason why?
- 4 A. For more adjustment in the system.
- 5 Q. Did they tell you that they were -- cables were
6 breaking?
- 7 A. No.
- 8 Q. When's the first time you learned that the cables
9 had been breaking?
- 10 A. I think we learned when we were party to this suit.
- 11 Q. Okay. Before then, no one had informed you that
12 cables were breaking or there was a problem with
13 them breaking?
- 14 A. No.
- 15 Q. Once you started making the eye bolt safety cable,
16 did you stop making the other kind that you were
17 making in '94, '95?
- 18 A. I'd have to review my sales history. We only
19 looked up to -- to the '94 -- '94 time frame. I'll
20 have to go further and see what the time period
21 is. I'll have to get back to you on that.
- 22 Q. Okay. Would your records show who it was you
23 talked to in '99 or 2000 around that time frame

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- 1 about changing to -- to the eye bolt system?
- 2 A. It probably would show who ordered them with us.
- 3 Q. Okay. So that's similar to Mike Bevilacqua in
- 4 '94?
- 5 A. Correct.
- 6 Q. Okay. And the reason given was -- that they wanted
- 7 this design is to keep them tighter or tighten them
- 8 up or what?
- 9 A. The reason they -- they weren't extremely explicit
- 10 on a reason. They wanted -- they were very
- 11 explicit about wanting a lot of adjustment.
- 12 Q. Okay.
- 13 A. Additional adjustment.
- 14 Q. But they didn't tell you why?
- 15 A. No.
- 16 Q. Okay. I'll show you Plaintiffs' Exhibit P. Have
- 17 you ever seen this drawing before?
- 18 A. I don't recall it.
- 19 Q. Okay. Was any type of drawing given to you at the
- 20 time that you went out and talked to them?
- 21 A. I don't recall it.
- 22 Q. Okay. I'll show you Plaintiffs' Exhibit Q. Have
- 23 you ever seen that before?

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- 1 A. Those are the drawings provided by Commercial that
2 we've assembled to.
- 3 Q. Okay. And, so, you would have gotten these
4 drawings when in the process?
- 5 A. With the purchase order.
- 6 Q. Okay. So, the -- the purchase order that came
7 in -- which purchase order would that be? Would
8 that be in exhibits -- Exhibit S? This is Exhibit
9 S.
- 10 A. From the time frame of their doing the drawing to
11 the time frame of the order, that the -- you know,
12 I'm not sure what the time frame of when they
13 give -- gave us the drawing into when we started
14 production of these. I don't know if -- you know,
15 the period, you know, but this was an ongoing
16 drawing that they would, say, send to us after, you
17 know, after the initial run, so --
- 18 Q. Okay. So, there's an initial run, and then you're
19 saying they send you a drawing?
- 20 A. Yeah. We have drawings on file for these of the
21 different lengths, and it was unusual that they
22 wanted from the nut to the nut sort of.
- 23 Q. Why is that unusual?

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- 1 A. I mean, it's just, usually, the industry standards,
2 you measure with overall length, you know, so
3 that -- but that's no big deal. Just how they
4 measured it.
- 5 Q. It doesn't have any particular significance?
- 6 A. No.
- 7 Q. Oh. And you're saying that there's other drawings
8 that you might have of what was ordered by CCI,
9 Commercial Carriers, Inc., in your files?
- 10 A. I would think they'd change the drawing with the
11 length. I'd have to review that.
- 12 Q. Okay. Might be more than one drawing?
- 13 MR. PAULUS: We did produce you a drawing of
14 substantially similar to this, but not identical.
- 15 MR. KOUSTMER: Okay.
- 16 MR. PAULUS: We can look for more. Okay? I said we'll
17 look.
- 18 BY MR. KOUSTMER:
- 19 Q. Let me show you Plaintiffs' Exhibit R while we're
20 going into that. This looks like -- what is this?
- 21 A. That's our work order.
- 22 Q. Okay. You know whose writing's on there?
- 23 A. As far as the signature down here, that looks like

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1 the receipt for the gentleman at Commercial, and
2 looks like we back ordered some nuts.

3 Q. Okay. Now, I was also given a couple other
4 exhibits by your attorney, Exhibit Z. I don't know
5 if you got Z. That must be in this document
6 production. Can you tell me what that is?

7 A. This is one of our purchase orders for the -- for
8 the threaded studs.

9 Q. From?

10 MR. PAULUS: I'm not sure this is supposed to be
11 attached.

12 THE WITNESS: Yeah, these were for the studs, and it
13 looks like on the initial product we provided, we
14 probably provided the -- you know, we had the
15 cable coated. We might have either bought the
16 cable complete or sent it out to get coated. I'll
17 have to -- again, I'll have to review that more
18 closer. Based on the price, I don't know.

19 BY MR. KOUSTMER:

20 Q. Okay. Well, let's -- this is a -- oh, you're
21 buying the product yourself from Assembly Specialty
22 Products?

23 A. That's correct.

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- 1 Q. Okay. So, is this generated in your computer
2 system, this document?
- 3 A. Correct.
- 4 Q. Okay. And that shows the -- the first page shows
5 the studs?
- 6 A. Right.
- 7 Q. Okay. What's the second page show?
- 8 A. It just gives more detail.
- 9 Q. Same deal with the studs?
- 10 A. Yes.
- 11 Q. Okay. And the third page, I think maybe that's a
12 different order. What's the third page? That's
13 from a different company?
- 14 A. That's from a different company called Loos,
15 L-o-o-s.
- 16 Q. What are you ordering from them?
- 17 A. It's either the complete cable or the cable getting
18 coated. I'm not a hundred percent sure. It's one
19 or the other.
- 20 Q. Okay. So, you're not sure whether it's the
21 complete cable or just the coating of the cable?
- 22 A. Correct.
- 23 Q. And these are all received in December of '94,

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1 correct?

2 A. Correct, from the upper right-hand corner.

3 Q. And then, oh, Plaintiffs' Exhibit AA, I think, is

4 just the second page of the third page of this.

5 A. Just more detail.

6 Q. Got the same number on it. And, again, that's just

7 ordering of the lot of the quarter. How much is in

8 a lot?

9 A. A lot, which is the term we used in the computer to

10 enter that particular item.

11 Q. Okay. Oh. Okay. How much are you ordering here?

12 A. Looks like from down here it was 20,000 feet.

13 Q. Okay.

14 A. And received 19,715.

15 MR. PAULUS: I think these two go together. This is

16 from Z. I think the document numbers are the

17 same.

18 MR. LARSON: Okay.

19 MR. PAULUS: Yeah.

20 BY MR. KOUSTMER:

21 Q. When the design was changed around 1999, 2000, did

22 you have any input on how it -- the new design

23 should be, on specification, diameter coating?

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- 1 A. They -- essentially my only input was to find the
2 fully threaded eye bolt, because what they found
3 in the catalogs again is standard commercial item
4 was not fully threaded, and I could find those for
5 them and get them fully threaded, which would help
6 them, you know, install the cables.
- 7 Q. Okay. You -- it was requested to get a fully
8 threaded eye bolt?
- 9 A. Correct.
- 10 Q. Did anyone ever ask you from Commercial Carriers,
11 Inc. in '94, '95 to perform some tests, any type
12 of testing on the cables you were selling them?
- 13 A. No.
- 14 Q. Did you offer to perform any type of testing?
- 15 A. No.
- 16 Q. Did anybody at Commercial Carriers, Inc. ask you
17 for any OSHA requirements or any other
18 requirements that has to deal with strength before
19 they ordered these safety cables?
- 20 A. No.
- 21 Q. Did anyone at Commercial Carriers, Inc. in, '94,
22 '95 ask you to give an opinion based on your
23 engineering background as to what would be the

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- 1 suitable material specification and/or coating to
2 do to make these safety cables?
3 A. No.
4 Q. Did you render any opinion with your engineering
5 background about what material specifications
6 coatings should be used?
7 A. No.
8 Q. And to your knowledge, who besides Mike B -- I
9 won't try --
10 A. Bevilacqua.
11 Q. Bevilacqua?
12 MR. LARSON: Bevilacqua.
13 THE WITNESS: We've had three different versions.
14 BY MR. KOUSTMER:
15 Q. Who besides Mike were you communicating with at
16 Commercial Carriers, Inc. at the time?
17 A. There was another gentleman, Ron Vacanti, that was
18 in Purchasing.
19 Q. Ron?
20 A. Vacanti.
21 Q. Want to spell that for the Court Reporter, if you
22 know?
23 A. Yeah. I think it is on some of the paperwork in

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1 there.

2 MR. LARSON: V-a-c-a-n-t-i is what's written here.

3 THE WITNESS: I think that's correct.

4 BY MR. KOUSTMER:

5 Q. You probably -- well, have you seen him since? Do

6 you know if he's still in this area?

7 A. I -- I haven't seen him since. He left Commercial

8 Carriers, you know. I haven't had contact with him

9 or anything like that.

10 Q. Anyone else you might have talked with over at

11 Commercial Carriers, Inc. as it relates to this

12 ordering of the safety cables?

13 A. There -- there could have been engineers in the

14 past. I just don't recall any of their names.

15 Q. Do you know how many engineers were working there?

16 A. I don't know how many men they had in Engineering.

17 Men or women.

18 Q. More than one, though?

19 A. I -- I would assume so, a company that large.

20 Q. Okay. Was Mike B introduced as an engineer?

21 A. I'm not sure if he was in Engineering or if he was

22 in Purchasing. It -- you know, it was sort of --

23 he might have been wearing both hats.

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1 MR. KOUSTMER: If you guys want to take a break, I want
2 to just look through these exhibits, make sure I
3 got everything. I might be done.

4 (Off the Record Discussion)

5 BY MR. KOUSTMER:

6 Q. Sir, I just have couple other questions.

7 A. Okay.

8 Q. When the order came in, started to come in, to your
9 knowledge, did you or did you not have a drawing of
10 the cables?

11 A. No. From the time frame that I saw, I can't -- I
12 don't know.

13 Q. You don't know?

14 A. I -- you know.

15 Q. What is it -- and we covered some of this. But
16 what is it exactly you would do from the time the
17 cables came to you? What -- what is the assembly
18 process?

19 A. As far as how we assembled the wire rope
20 assemblies, right?

21 Q. Yeah. I'm assuming you ordered the wire rope from
22 someone?

23 A. Right.

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- 1 Q. And then you do something to it to get it to
2 Commercial Carriers, Inc.. What is it? What is
3 that process that you used? What did you do?
- 4 A. The process is we'll go by their specs to say I
5 want quarter inch coated to 5/16ths with threaded
6 studs on each end. Might be a length of a hundred
7 twenty-five inches, could be a hundred and thirty
8 inches, whatever they'd want in the quantity they'd
9 want. The inside sales guy take the order, and
10 write it up as a work order. Then a copy of that
11 work order would go to the Production Department,
12 where they would cut the wire that's coated, strip
13 off the appropriate amount of plastic.
- 14 Q. Okay. They -- so, they cut the wire to the length
15 specified, correct?
- 16 A. Right. Taking --
- 17 Q. First they choose the -- the diameter of the wire
18 or --
- 19 A. Right.
- 20 Q. That's already ordered or --
- 21 A. Right. It's in inventory.
- 22 Q. Okay. So, you have some in inventory, so you cut
23 the wire, you strip off the coating, right?

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1 A. Correct.

2 Q. And then, in this case, you did what?

3 A. After you strip it off on each end, then you'd
4 slide the threaded stud over the -- the wire and go
5 through a swaging process, and then open channel
6 die.

7 Q. What process is it? Can you explain?

8 A. I -- a hydraulic swaging. It's -- we have four
9 presses, but the one that -- the production one is
10 a five hundred ton press. It's a hydraulic press
11 with a ram. Basically, you -- you use separate --
12 separate dies for different size wire ropes.
13 Okay? So, the die for this particular one, it's a
14 9/16ths thread, so we ordered the studs so that
15 they swaged down to be smooth, so after finish, it
16 will be down to 9/16ths. So you put it in 98/16ths
17 open channel die. It's like a split die, looks
18 just like this.

19 MR. LARSON:

20 MR. LARSON:

21 MR. PAULUS: Did you want to take some pictures of
22 these?

23 THE WITNESS: Yeah, we can e-mail it. You just swage

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1 down. This is -- this is -- this is actually
2 fixed up here. And the ram takes it up, swages it
3 on, and it becomes like a continuous piece of
4 steel there.

5 BY MR. KOUSTMER:

6 Q. And you're swaging on what, the --

7 A. The threaded stud onto the cabling.

8 Q. Okay.

9 A. After -- after -- after they're manufactured, they
10 get coiled, inspected, put in shipment container,
11 some type of box, and transported in our trucks
12 over to Commercial.

13 Q. Mm hmm. Okay. What's the inspection process?

14 A. Inspection process is that we have a two -- the
15 gentleman who does fabrication, there's four
16 people in that department. It's also visually
17 inspected by another individual than the guy who
18 swaged it, so that's --

19 Q. Okay. What are they inspecting? What are they
20 looking for?

21 A. Looking to make sure it was swaged.

22 Q. That wouldn't have anything to do with it breaking
23 at this point, would it? Looking at Exhibit F and

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1 E -- E and F?

2 MR. PAULUS: Object to the form.

3 BY MR. KOUSTMER:

4 Q. Would this swaging have anything to do with the

5 breakage at these -- this point?

6 A. If a wire rope is going to fail, it typically fails

7 beyond the swage fitting.

8 Q. Okay.

9 A. Whether it's new, used, whatever.

10 Q. Is that what that did here?

11 A. Looks like it failed on the other side of the -- of

12 the swaging, correct.

13 Q. Okay. So, your swaging process, it's really not an

14 issue as to why this -- how this failed?

15 A. No.

16 Q. Okay. The only thing at issue is the wire itself?

17 A. I don't think the wire itself. The wire is fine.

18 Got to be inspected.

19 Q. Huh?

20 A. It's got to be inspected. Service life.

21 Q. But it's my understanding that you didn't tell the

22 people at Commercial Carriers, Inc. anything about

23 inspecting the cables, other than your one warning

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1 on your invoice, correct?

2 A. We have the warning on there, and the end user has
3 to take it upon themselves if he sees corrosion or
4 some type of deformation in the product to remove
5 it from service.

6 Q. Okay. And you didn't give them an opinion as to
7 how long the product would last?

8 A. No.

9 Q. Okay.

10 A. Too many variables.

11 Q. If you'd been asked for an opinion, would you have
12 given one?

13 A. It could have been months, it could have been
14 years, but, it depends on conditions. You're up
15 north, corrosion, salt, how well are the vehicles
16 maintained, are they washing them down. It's like
17 a car.

18 MR. PAULUS: Could you repeat the question? Read back
19 the question, please.

20 (Whereupon, the above-requested question was
21 then read by the reporter.)

22 THE WITNESS: And my response?

23 MR. PAULUS: Don't bother reading the response. But I

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1 just wanted to make sure you were answering the
2 question.
3 THE WITNESS: Okay.
4 MR. PAULUS: Is that it? You were -- the question you
5 were asking or --
6 BY MR. KOUSTMER:
7 Q. Well, I'm -- would you have given an opinion, I
8 think was the question, if they had asked you?
9 A. Would I give an opinion?
10 Q. Would have you -- would you?
11 A. You have given an opinion?
12 Q. If they had asked you, if they had told you we need
13 something for ten years, would you have given them
14 an opinion as to what material they should use or
15 what specifications?
16 A. On ten year, it -- again, it's the variables of
17 what type of environment that you're working in.
18 Q. Okay.
19 A. It really comes down to that.
20 Q. You knew they were going to be used on trucks,
21 correct?
22 A. Correct.
23 Q. And you knew those trucks carried cars all over the

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- 1 -- the United States, is that correct?
- 2 A. Yeah. I assume.
- 3 Q. So, would -- if you had been asked, would you have
- 4 recommended this material to use for those safety
- 5 cables?
- 6 A. If I -- if I'd been asked what?
- 7 Q. If you had been asked that they needed a material
- 8 to use for safety cable that they wanted to last
- 9 approximately the -- the length or use of the
- 10 truck, which they say is, give or take, ten years,
- 11 depending on the conditions, would you have
- 12 recommended this material?
- 13 A. I would -- would -- you know, based on that, a ten
- 14 year life span would be pushing the window for
- 15 galvanized.
- 16 Q. You -- you would say -- what do you mean, "pushing
- 17 the window for galvanized"?
- 18 A. That's -- that's a long time for any type of
- 19 galvanized product to be subject to salt,
- 20 corrosion.
- 21 Q. And why's that?
- 22 A. It's the chemical process that happens, the
- 23 galvanizing breaking down.

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1 Q. So, would stainless steel have been a better
2 choice?
3 MR. LARSON: Object to the form.
4 THE WITNESS: He objects. What do I say? Do I answer
5 the question?
6 MR. PAULUS: Go ahead. Go ahead and answer.
7 THE WITNESS: Could you repeat the question?
8 BY MR. KOUSTMER:
9 Q. Would stainless steel have been a better choice?
10 A. Stainless steel would have been more corrosion
11 resistant.
12 Q. And what is it about the galvanizing that makes it
13 more susceptible, I think you said, to breaking
14 down or --
15 A. It's the oxidation process.
16 Q. And if you'd used steel that wasn't galvanized,
17 would you have the same problem or --
18 A. You would have accelerated the oxidation process.
19 Q. Okay. Are you surprised that after five to six
20 years on these trucks these cables started
21 breaking?
22 A. I'm surprised if they were maintained properly and
23 inspected, they would have been removed.

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1 Q. Okay. So, you're saying that if they had been
2 maintained and inspected, they should have been
3 removed, correct?
4 A. Correct.
5 MR. PAULUS: Object.
6 THE WITNESS: You object?
7 MR. PAULUS: Object, but go ahead and answer.
8 MR. KOUSTMER: That that -- that's the solution to the
9 problem, not washing them down or anything?
10 MR. PAULUS: I object to the form. I think it's vague.
11 THE WITNESS: That is --
12 BY MR. KOUSTMER:
13 Q. Okay. Well, if I understand what you're saying,
14 that -- that, really, the material that was used on
15 these cables really wasn't suitable for a ten year
16 time span?
17 A. Depending on conditions. Ten years is a long time
18 in, you know, a difficult environment.
19 Q. So, whether it's suitable or not, was there
20 something more suitable to use for a ten year time
21 span depending on conditions, which we know that
22 these safety cables are going to be on a trailer
23 hauling cars all over the United States, north,

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1 south, east, west?
2 A. Mm hmm.
3 MR. PAULUS: Object to the form.
4 THE WITNESS: So, if he objects, what do I do?
5 MR. PAULUS: You go ahead and answer.
6 THE WITNESS: Okay. Can you repeat the question then?
7 Do you mind? I want him to repeat it.
8 MR. KOUSTMER: Yes, you better have him repeat it.
9 (Whereupon, the above-requested question was
10 then read by the reporter.)
11 THE WITNESS: Stainless would have a longer service
12 life, so it -- it was and is an option.
13 MR. KOUSTMER: Okay. Thank you, sir. That's all I
14 have.
15
16 EXAMINATION BY MR. LARSON:
17 Q. Mr. Hanes, my name's Dave Larson.
18 A. Okay, Dave. How are you?
19 Q. I have a few questions for you. Good. How are
20 you?
21 A. Not too bad.
22 Q. When the -- I take it you have a -- a facility here
23 in the Buffalo area where you do the things you've

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- 1 talked about, the swaging and that sort of thing?
- 2 A. Correct.
- 3 Q. Is that a -- a -- like a factory environment?
- 4 A. Yes. Yeah.
- 5 Q. And as I -- if I understand correctly, you have in
- 6 inventory at any given time different, with respect
- 7 to wire rope, different sizes and dimensions of --
- 8 of wire rope and different strengths of wire rope?
- 9 A. Correct.
- 10 Q. All right. And depending upon a particular order
- 11 you receive, it may be necessary for you to order
- 12 additional, for example, wire rope from your
- 13 suppliers to fill a particular order?
- 14 A. That's correct.
- 15 Q. Now, will you go off your inventory first and then
- 16 start seeing how much you need, stage out your
- 17 orders that way?
- 18 A. We try to -- to work the trends as best as we can
- 19 for inventory control.
- 20 Q. So, you got somebody keeping an eye on how much
- 21 you've got in inventory gauged against your --
- 22 A. Your historical trends.
- 23 Q. -- your current orders?

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- 1 A. Historical trends, orders, computer keeps track --
- 2 Q. All right.
- 3 A. -- with manual verification, cycle counts.
- 4 Q. Is there a particular individual as of 1994, '95
- 5 that was in charge of monitoring the inventory
- 6 process?
- 7 A. For which product line?
- 8 Q. Let's say wire rope.
- 9 A. For wire rope, at that time, it would be a Don
- 10 West.
- 11 Q. And would Mr. West be also the person if he thought
- 12 it was time to replenish your supply of a
- 13 particular variation of wire rope, that he would
- 14 inform someone in your Purchasing Department to
- 15 secure that?
- 16 A. Correct.
- 17 Q. All right. In the '94 or '95 time frame, who were
- 18 the wire rope suppliers for one quarter inch wire
- 19 rope to Hanes Supply company?
- 20 A. In that time frame?
- 21 Q. Yes.
- 22 A. We had Kumho, K-u-m-h-o.
- 23 Q. And that's a company we have the mill certs on?

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- 1 A. Certs on, right. Now, there was a company -- I'll
2 have to review when they start having financial
3 problems -- a company called Manho, M-a-n-h-o,
4 another Korean manufacturer. And those were the
5 two major players in that time frame. We became
6 involved with Kiswir, which is another Korean
7 manufacturer when Manho had some problems. Kiswir,
8 K-i-s-w-i-r, when Manho had some time frame -- had
9 some financial problems. So those were the major
10 players for us.
- 11 Q. And would your records, either hard copy or
12 computer, at your company that the search was
13 requested reveal, for example, in 1994 from whom
14 you would have purchased one quarter inch wire rope
15 and the quantity as to each of your suppliers?
- 16 A. We could review the -- the purchase orders to see
17 which vendors we utilized in that time frame.
- 18 Q. All right, sir. Now, how -- well, strike that. I
19 think I understood you to say that you can order
20 from, say, Kumho a quarter inch wire rope and ask
21 them to put the particular coating on that your
22 customer might request?
- 23 A. Correct.

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- 1 Q. And is it also correct that you have the capability
2 at your facility to also install?
- 3 A. No. That's an extrusion process, it's called, and
4 you extrude the -- the -- you know, appropriate
5 synthetic material that the customer wants on the
6 wire rope.
- 7 Q. And you don't do that?
- 8 A. No, we don't do that. No.
- 9 Q. So for all of the coated wire rope that you've
10 sold, including what we've been talking about
11 here --
- 12 A. Mm hmm.
- 13 Q. -- that's always done by the supplier of the wire
14 rope?
- 15 A. Supplier of the wire rope or a third party,
16 possibly Loos. We might have sent wire rope for
17 them to be PVC coated, as we've talked about
18 before.
- 19 Q. So you might take uncoated wire rope that you have
20 in inventory and send it out to somebody here in
21 the United States to do the coating?
- 22 A. Correct.
- 23 Q. All right. And the company that you might use for

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1 that or had used in the past was who?

2 A. Loos, L-o-o-s.

3 Q. Thank you. Are you able to determine by looking at
4 the sample that we have here as to whether that
5 coating would have come from Korea or from Loos?

6 A. Difficult to say. I -- I -- I can't -- I can't
7 answer which, you know, how that was extruded, by
8 which -- which vendor.

9 Q. Do you know if there's a -- a way for a
10 metallurgist to be able to differentiate between
11 what the Koreans might have used versus Loos?

12 MR. PAULUS: In terms of the --

13 THE WITNESS: It wouldn't be a metallurgist because
14 you're talking about plastic.

15 BY MR. LARSON:

16 Q. Okay.

17 A. Some type of synthetic material.

18 Q. Okay. So somebody who would be knowledgeable about
19 analyzing this particular material.

20 A. Geez, I've never had that question.

21 Q. Okay. Regardless, it's not a process that you do.
22 If we assume that the coating for the CCI orders
23 was done by the Korean suppliers --

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- 1 A. Okay.
- 2 Q. -- how big of a lot is -- does it -- does it come
- 3 on a big spool?
- 4 A. Typically 5,000 foot reels.
- 5 Q. Now, do you recall if you had any other customers
- 6 back in 1994 to 1995 who were also requesting one
- 7 quarter inch wire rope with the specifications set
- 8 forth in the documents we've looked at, the 7 by 19
- 9 wire rope that wanted a yellow coating, vinyl
- 10 coating?
- 11 A. There might have been other small orders, but the
- 12 -- the bulk of the inventory utilization was for
- 13 Commercial.
- 14 Q. Would your records indicate back in, again, this
- 15 time frame, a -- a purchase order to one of the
- 16 Korean suppliers of your wire rope for this
- 17 particular type and strength of wire rope with a
- 18 yellow vinyl coating?
- 19 A. Would -- would our purchase orders specify that?
- 20 Q. Yes, sir.
- 21 A. Yeah. I'm --
- 22 Q. Okay. And if you're special ordering that
- 23 particular type of wire rope to comply with a

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- 1 specific purchase order from a customer, would you
2 typically make that order from your supplier to one
3 supplier?
- 4 A. Could be. Could be. You know, other -- I mean,
5 any of those three could do the job.
- 6 Q. But when you're -- when you're -- I see. All
7 right. But if your records indicated that there
8 was only one Korean company that was providing you
9 the yellow coated wire rope that met the
10 specifications of Commercial Carriers, Inc. and
11 none others were providing that, wouldn't it be
12 reasonable to assume that that company that was
13 giving it to you was the one that provided the wire
14 rope to -- to respond to the CCI purchase orders?
- 15 A. It's -- I mean, that is an option, but it's -- you
16 know, like I say, you can't be a hundred percent
17 sure which particular company we utilized based on
18 we -- there's no history on this cable that's in
19 question. Correct?
- 20 Q. I'm sorry?
- 21 A. There's no history on when it was installed or
22 anything, is there?
- 23 Q. Well, we know that it was in 1995.

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1 A. Oh, it was installed in '95, okay. Okay. And it
2 was never replaced then? It was original equipment
3 that --
4 Q. Well, if we operate under that assumption.
5 A. Okay, '95. Well that narrows the window for me. I
6 didn't know when it was installed.
7 MR. PAULUS: But that's an assumption, because we don't
8 have the item. I -- are we in agreement we don't
9 have the item that broke?
10 MR. LARSON: I don't have the item, but I'm just trying
11 to identify ways in which to --
12 MR. KOUSTMER: The absent party had -- company had the
13 item.
14 MR. PAULUS: Last we heard.
15 MR. KOUSTMER: And discarded it.
16 BY MR. LARSON:
17 Q. My point is if there's -- if there's only one
18 company that you were obtaining the yellow
19 coated --
20 A. Mm hmm.
21 Q. -- wire rope that met the specifications set forth
22 by Commercial Carriers, Inc., then they would have
23 been the -- the company who provided the wire rope

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- 1 for the entire batch of cables that were produced,
2 true?
- 3 A. That's -- that's possible.
- 4 Q. Okay. With respect to the 1999, 2000 time frame
5 that you were asked about -- Mr. Bevilacqua works
6 for a different company now, doesn't he?
- 7 A. He's still with Commercial Carriers, right?
- 8 Q. Actually, he's not, but, I'm just -- you would have
9 purchase orders from his current employer --
- 10 A. Oh.
- 11 Q. -- as to the 1999, 2000 cables that were purchased?
- 12 A. You -- I'm sure that we -- we probably do have
13 something.
- 14 Q. Let me ask you this. Mike Bevilacqua is -- is the
15 company that he's with currently that you're
16 talking about that was doing the 1999, 2000 --
- 17 A. Okay.
- 18 Q. -- design change with the eyelet --
- 19 A. Okay.
- 20 Q. -- is that -- is that who you're referring to?
- 21 A. Well, it's the guys out in West Seneca.
- 22 Q. I understand. But it is Mike Bevilacqua's company?
- 23 A. He's still there, right? Yeah, yeah. So, yeah,

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1 he's out there in -- yeah.
2 Q. Okay. Let's go off the record.
3 (Off the Record Discussion)?
4 BY MR. LARSON:
5 Q. Let's go back on the record.
6 A. Okay.
7 Q. Just so it's clear, whatever company Mr. Bevilacqua
8 is employed by today --
9 A. Okay.
10 Q. -- whoever that might be --
11 A. Yeah.
12 Q. -- that is the company that you were talking about
13 with respect to the 1999 and 2000 --
14 A. Change.
15 Q. -- purchase orders and the change -- the change in
16 that particular wire rope configuration?
17 A. That's correct.
18 MR. KOUSTMER: I'm going to object. I think the
19 purchase orders would show what company it was. I
20 don't really know if currently he's -- where --
21 I don't know when Bevilacqua, whatever, moved, was
22 it '99, 2000 or when, but --
23 MR. LARSON: Well, CCI shut down its operations in '97.

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1 MR. KOUSTMER: But they were taken over by --
2 MR. LARSON: They didn't continue manufacturing car
3 haulers, Tom. That's the point.
4 THE WITNESS: They sold the property off for big bucks
5 right over by the Target Store.
6 MR. KOUSTMER: Let's see what the orders say.
7 MR. PAULUS: Mm hmm.
8 THE WITNESS: Yeah.
9 BY MR. LARSON:
10 Q. Now, in 1994, when you went over to Commercial
11 Carriers, what was their location at that time, do
12 you remember?
13 A. They were on Walden Avenue.
14 Q. And did you go over there in response to a request
15 by Mike Bevilacqua or someone else to -- to come
16 over?
17 A. Just want him to wait downstairs? Excuse me.
18 MR. PAULUS: I told him to wait downstairs.
19 THE WITNESS: It's Dave Learn. Somewhere in that time
20 frame.
21 BY MR. LARSON:
22 Q. I guess my question is was your visit to CCI in
23 1994 in the fall in response to a request you

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1 received from someone at CCI?

2 A. Yes. I would think so.

3 Q. Okay. And I understand that that was almost ten

4 years ago.

5 A. Yeah.

6 Q. We're trying to understand as best as what

7 happened, but would it be fair to say that the

8 purpose for them requesting you to visit was to

9 discuss with you the -- the various options for the

10 material that they would utilize for these cables

11 to go on, above the tractor?

12 MR. PAULUS: Object to the form.

13 THE WITNESS: The primary thing I could remember about

14 the call was the threaded stud. That's what they

15 wanted to -- to tie these things in.

16 BY MR. LARSON:

17 Q. And would it be fair to say that as of the time you

18 left that meeting, you were aware of the purpose

19 that they had intended for the cables and the

20 threaded stud assembly?

21 A. Well, they were talking about these upright posts

22 with the cables, yeah.

23 Q. And did -- would it be fair to say that you also

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1 had an understanding then that the -- that the
2 purpose of the -- of the cables was to perhaps
3 guard against a fall or a slip by a workman up at
4 that level?

5 A. The -- they were railing cables. I assumed they
6 might have a man up there at that point in time.
7 It was a design change, I guess. They'd never
8 provided anything in the past.

9 Q. Okay. But -- but I want -- I'm just interested in
10 your understanding of the reason that cables were
11 being considered was with respect to fall
12 protection?

13 A. They -- I was -- it -- it was more of a -- it was a
14 safety cable, but they never -- you know, it was --
15 I didn't know they were talking about a perimeter
16 or, you know, actual fall where a guy was going to
17 be hooking off with a lanyard or something along
18 that line. That never came into play.

19 Q. Okay. If you had been specifically advised that
20 you -- a particular strength of cable was needed to
21 withstand the -- whatever type of forces that a
22 human body might impose --

23 A. Mm hmm.

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- 1 Q. -- wouldn't you agree that a 7,000 pound tensile
2 strength would be adequate for that purpose?
- 3 A. Yes.
- 4 Q. And probably many times more than adequate?
- 5 A. Well, it -- it exceeds what -- there's been a lot
6 of changes in the fall protection laws, and it
7 exceeds what OSHA's talking about now. That's come
8 more into forefront in the late 90s. 7,000
9 pounds. The application, I don't have a problem
10 with it.
- 11 Q. Okay. So, the -- the choice of the -- the
12 selection of the tensile -- is it tensile strength
13 that we're talking about?
- 14 A. Tensile, minimum breaking strength.
- 15 Q. The selection of a wire rope, that that's physical
16 properties include tensile strength of 7,000
17 pounds, based on the representation that it's to
18 withstand a human body, you believe that's an
19 adequate specification for that purpose?
- 20 A. Well, I mean, you could have some four hundred
21 pound guy that's going from a running start 50 feet
22 away from the back end of the carrier, but, I mean,
23 you know, that's a hypothetical but --

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1 Q. Sure.

2 A. -- but, I mean, yeah. I mean, 7,000 seems

3 reasonable.

4 Q. Let me ask you this. The Exhibit Q which you were

5 shown with the drawing?

6 A. Mm hmm.

7 Q. If it specifies in part one quarter to 5/16th times

8 7 times 19 GAC yellow coated cable, with TS 14916-3

9 swage studs?

10 A. Mm hmm.

11 MR. KOUSTMER: That's what you provided to them?

12 THE WITNESS: Yes, threaded studs, right.

13 MR. PAULUS: Can you hold up for a second? We'll pull

14 this out and show it to him?

15 MR. LARSON: Sure.

16 MR. PAULUS: It's in here, isn't it?

17 MR. KOUSTMER: Should be. I think they're all in

18 there.

19 MR. PAULUS: There we go.

20 THE WITNESS: Okay.

21 BY MR. LARSON:

22 Q. Now, the -- the specification as to the dimensions

23 of the cable, that would have been based upon

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1 information that you would have provided to
2 Commercial Carriers, true?
3 A. They had our catalogs, they knew the -- the specs
4 on the rope, I assume, and that's what they chose.
5 Q. And when you were meeting with them, did -- did you
6 discuss with them as an option the -- the one
7 quarter inch wire rope as one of the options that
8 they could consider?
9 A. It -- it's possible. I don't know how we got to or
10 how one quarter inch became the final judgment.
11 You know, again, we would be going on what they
12 wanted.
13 Q. Well, you -- you indicated earlier that you were
14 invited over there to explain to them the options
15 that they had --
16 A. Mm hmm.
17 Q. -- for this product for this particular need,
18 correct?
19 A. Mm hmm.
20 Q. You have to say yes.
21 A. Yes. Yeah.
22 Q. And I guess my question is, first off, was -- was
23 wire rope one of many considerations for the

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1 particular material or was that in your mind the
2 best?

3 A. That wasn't in my mind. That was in the customer's
4 mind. That's what they wanted to go with.

5 Q. Okay.

6 A. They didn't -- said to me that, hey, we want to put
7 chain up there, whatever.

8 Q. So that when you came over there, did they tell you
9 we want to discuss with you wire rope?

10 A. They -- the main thing I remember is this doggone
11 stud that they were tied into, they wanted some way
12 to -- with this threaded stud. That was the -- the
13 whole focus of the meeting.

14 Q. Okay. And the threaded studs was something you
15 could -- you had done in the past and were capable
16 of doing, true?

17 A. Yeah. I don't think Delavan -- I don't believe
18 they ever utilized them, but we'd done it for other
19 customers. It's very common in the industry for
20 railings to use threaded studs.

21 Q. Okay. That's the point I was trying to make, that
22 there was nothing -- nothing out of the ordinary
23 with, what, using threaded studs for the particular

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1 application in question?

2 A. No.

3 Q. All right. Well, I guess I'm curious then, if --

4 if they already had wire rope in mind and the

5 threaded studs in mind, what -- what was the

6 purpose for them asking you to come and see it?

7 A. Probably to see if they could get the -- the

8 threaded stud with the type of thread going through

9 the adjustment.

10 Q. You told them you could do that?

11 A. Yeah. We could get those machined with the longer

12 thread length.

13 Q. Now, if there was anything about either their plans

14 as -- as discussed with you when you visited them

15 or their -- their ultimate selection of the wire

16 rope and the manner in which it was to be

17 configured for them, if there's anything about that

18 -- that that you felt was inadequate or

19 inappropriate for the use that you knew they

20 intended, would you have advised them of that?

21 MR. KOUSTMER: Objection. Go ahead.

22 MR. KOUSTMER: I'm just objecting as to the form.

23 THE WITNESS: Repeat the question, I guess.

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- 1 MR. LARSON: Would you read back?
- 2 (Whereupon, the above-requested question was
- 3 then read by the reporter.)
- 4 THE WITNESS: They picked out what they wanted. We
- 5 assembled it. There's a service life to this
- 6 product. And it's got to be inspected.
- 7 BY MR. LARSON:
- 8 Q. Okay. Well, I understand that. That's not my
- 9 question.
- 10 A. Okay. Okay.
- 11 Q. My question is if -- well, and we can expand it.
- 12 If -- if a customer comes to you and makes a
- 13 request for something that you sell --
- 14 A. Mm hmm.
- 15 Q. -- you know the intended use that they have in
- 16 mind.
- 17 A. Not all the time. But sometimes.
- 18 Q. I assume, as you do, as did in Commercial Carrier's
- 19 case, you knew what they had in mind for this
- 20 cable, right? You told us that?
- 21 A. Yeah, they were going to put these cables across
- 22 these uprights, posts, right.
- 23 Q. If they came to you and ordered something that was,

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1 in your judgment, totally inappropriate or
2 inadequate for that --
3 A. Yeah.
4 Q. -- for that use, would you tell them that?
5 A. Yeah, I would have, if it was totally inappropriate
6 or inadequate. This is adequate.
7 Q. Okay. That's my question.
8 A. Okay.
9 Q. I mean, these are customers of yours, they're
10 people?
11 A. Heck, yeah. Yeah. Heck yeah. Yeah.
12 Q. You want to help them make the right decision?
13 A. Yeah. We try our best, you know, to help, but you
14 know, the -- the -- you know, we've -- can't stress
15 enough that we deal with a large differential type
16 of customer base, that, you know, we -- we can
17 present the information. We'll help them as much
18 as possible. But they've got to make intelligent
19 decisions for the industry, you know, and -- and,
20 you know, you know, like I say, this -- this --
21 this, if properly maintained, can do the job.
22 Q. Okay. So, then I'm not trying to argue with you.
23 A. Right, right.

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- 1 Q. But what I'm trying to establish is that -- and you
2 already indicated -- the customer makes the final
3 call on what they want?
- 4 A. Yeah.
- 5 Q. And you said that. But, in this case, it was also
6 a process in arriving at that final judgment of
7 consulting with you as to what their various
8 options were --
- 9 A. Mm hmm.
- 10 Q. -- for their intended purpose; fair statement?
- 11 A. We provided different information on what was out
12 there.
- 13 Q. Okay. And that's part of the fact gathering
14 process or enabling them to make an intelligent,
15 informed decision. As you said, part of that
16 process was eliciting information from you as to
17 what various options you could provide from your
18 company, correct?
- 19 A. I mean, you could brainstorm on a gazillion
20 different ways of doing this thing, you could go to
21 synthetic rope, you could go to -- you know, again,
22 chain, et cetera, et cetera.
- 23 Q. Understood. But, you, as I understand it, provided

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1 them at least enough information from which they
2 were able to draft a very specific purchase order
3 for a very specific strength of wire rope --
4 A. Mm hmm.
5 Q. -- and a very specific coating for that wire
6 rope --
7 A. Mm hmm.
8 Q. -- and a very specific manner in which it was to be
9 swaged and fitted, correct?
10 A. Yeah. I mean, that -- it is what it is.
11 Q. All right. Did you have any discussions with the
12 people at Commercial Carriers on the issue of
13 tension to be applied to the cables?
14 A. I don't recall it.
15 Q. Now, I think you indicated earlier and I think you
16 qualified it to just say that it would be a
17 preference on your part to have it taut -- that was
18 not your words -- but, was with no slack, is that
19 what you said?
20 A. That's what you typically see on railing -- cable
21 railing systems.
22 Q. Insofar as the longevity of the cable, as with taut
23 or in the manner as depicted in these photographs

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- 1 you've been shown, do you have any opinion as to
2 how, if at all, longevity would be affected?
- 3 A. I mean, if -- if it's flexing when it's taut, you
4 know, I don't know what type of movement and
5 cycling is going on versus it being loose and --
6 and moving that way, you'd have to -- probably have
7 to do an engineering study.
- 8 Q. Okay. So, would you agree that as a cable that's
9 sitting as depicted in Exhibit G is not in tension?
- 10 A. The cable?
- 11 Q. Yes.
- 12 A. If there is tension in that, there's minimal load
13 on it.
- 14 Q. And with -- with respect to your testimony about
15 corrosion, do temperature variations come into play
16 there?
- 17 A. Definitely. Heat, cold cycles, I would think.
- 18 Q. Okay. I would want to make sure we don't try to
19 elicit opinions from you that you're not qualified
20 to offer.
- 21 A. Yeah, yeah. I'm -- I'm no chemist by any stretch
22 of the imagination.
- 23 Q. Feel free to tell us.

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1 A. Yeah.

2 Q. I don't have sufficient background to know that,
3 but if you have developed this expertise in the
4 course of your employment, then that's what I'm
5 interested in knowing.

6 A. Yeah, I -- I'm not a chemist.

7 Q. Okay.

8 A. So --

9 Q. And with respect to the -- your comments and
10 opinions about service life of a -- of a cable such
11 as this, would it -- would you also, on that
12 particular issue, defer to -- to the engineers or
13 the metallurgists who study those things on a
14 regular basis?

15 MR. KOUSTMER: Objection. Come on.

16 THE WITNESS: The -- a metallurgist, you know, would
17 have far more knowledge than I would based on salt
18 spray tests or whatever they do to determine, you
19 know, what the, you know, life span of this would
20 be. I can -- I can -- like I say, I can only --
21 you know, what happens in the market out there
22 is -- and there're so many different conditions
23 that can -- you know, get a tough winter, you get

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1 a lot of salt on the road. It's a problem.
2 BY MR. LARSON:
3 Q. Yeah. But in order to completely cause the
4 breakage of a cable --
5 A. This one?
6 Q. -- such as the -- the exemplar we have before
7 us? --
8 A. Mm hmm.
9 Q. -- you also have to have a failure in the -- and
10 help me with this. There's -- there's seven
11 different strands?
12 A. Seven strands.
13 Q. Seven different strands of 19 strands each,
14 correct?
15 A. Right.
16 Q. Okay.
17 MR. PAULUS: Well, in the orders, right, that we're
18 talking about.
19 MR. LARSON: In the orders.
20 MR. PAULUS: We're talking about the exemplar.
21 MR. LARSON: In the orders.
22 MR. PAULUS: Okay.
23 BY MR. LARSON:

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1 Q. If the -- if you could trace the failure of the
2 cables in question to one particular lot of wire
3 rope and you have no other failures from any of the
4 other cables that you've produced for Commercial
5 Carriers, what, if any, conclusions would you draw
6 from that?

7 MR. KOUSTMER: Objection.

8 THE WITNESS: Can you repeat the question, I guess?

9 (Whereupon, the above-requested question was
10 read by the Reporter.)

11 THE WITNESS: Substantial corrosion on the lost sample,
12 lost cable in question.

13 BY MR. LARSON:

14 Q. Okay. It -- it wouldn't matter to you at all if --
15 if there -- if only a select group of cables
16 failed from one particular lot of wire rope?

17 A. That -- well, if you're saying if there's a
18 manufacturing problem with the cable, that would
19 be -- you know, become apparent quickly, and, you
20 know, we have -- we have confidence in the vendors
21 that we utilize.

22 Q. And if that's the case, then -- then why haven't
23 all of the cables that you've produced that were

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1 subjected to the same, if not worse, conditions
2 that the cable in question was subjected to have
3 not failed and now coming up on ten years?

4 MR. KOUSTMER: Objection.

5 MR. PAULUS: Objection to form.

6 THE WITNESS: Okay. Can you repeat that again? I'm
7 just -- okay. Let me see what he's trying to
8 say. Okay?

9 (Whereupon, the above-requested question was
10 read by the Reporter.)

11 THE WITNESS: I don't know.

12 BY MR. LARSON:

13 Q. Okay. What -- are you aware of any abuse, misuse
14 or overuse of the cables that you sold to
15 Commercial Carriers?

16 A. I have no knowledge of what's occurring in the
17 market to them.

18 Q. What -- what would -- what's -- what would you
19 consider to be abuse, misuse or overuse of a wire
20 rope cable?

21 A. Abuse, looking at the end fitting, maybe it's been
22 bent or somebody has leaned into it or damaged it
23 with a -- you know, maybe the thing got into a

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- 1 slight accident and they, you know, scuffed up the
2 cable, broken wires. Abuse is -- you know, again,
3 I come back to the corrosion issue, anything that
4 would damage the product from its original state.
- 5 Q. Are the -- is the coating, either vinyl or --
6 what's the other option?
- 7 A. Another option is -- is nylon.
- 8 Q. Nylon. Is -- are those coatings intended to
9 prevent corrosion? Or, if not prevent it, at least
10 lessen it?
- 11 A. It -- you -- it can lessen it. It cannot totally
12 stop the corrosion process.
- 13 Q. Is there any other -- any other purpose for having
14 the coating that you know of, other than to deter
15 corrosion?
- 16 A. Well, it's -- it's a -- it's something to hold onto
17 that is going to be much more ergonomic or
18 friendlier on a guy's hands.
- 19 Q. For corrosion to occur, does the -- do the elements
20 need to somehow get past the coating?
- 21 A. No, the -- the -- it's not a total airtight seal
22 with -- with coating. I mean, so, the oxidation
23 process can happen.

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- 1 Q. Now, how -- how -- how would one go about
2 inspecting the -- this cable we have here for
3 corrosion?
- 4 A. Start off with the end fittings, see the -- the
5 amount there, and in any type of assembly, the key
6 point is always the connection point. And you have
7 to evaluate that. On this one, you can see that
8 the -- it's damaged, there, and that there's
9 substantial corrosion on the outer wires which
10 probably leads to a lot of inner corrosion. This
11 is, obviously, corroded all the way through.
12 Another thing that can be done is you can -- you
13 know, you can take it and you can sort of, if you
14 hear crackling when you move the wire rope, like
15 that, then you know you've got a problem. But
16 that's -- you know, it's one of the issues with --
17 you know, is how -- how to come up with that. But,
18 again, you know, the -- the key point is right --
19 you know, right at the opposite end of the -- of
20 where it's -- of where the swage is.
- 21 Q. All right. Is -- is that location one that is more
22 subject to corrosion than in other locations along
23 the cable as a result of -- because of the swaging

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- 1 process?
- 2 A. Because of the swaging process, it can't be -- you
- 3 know, it's not totally sealed, you know, and that
- 4 even -- even, you know, just -- just can't be done.
- 5 Q. All right. And does the cable itself extend --
- 6 A. Extends.
- 7 Q. -- up to where the bolt is?
- 8 A. No.
- 9 Q. Doesn't go into the threaded area? Probably about
- 10 a little bit before the threads start, maybe an
- 11 eighth of an inch or quarter of an inch --
- 12 A. Correct.
- 13 Q. -- back from the thread?
- 14 A. Correct.
- 15 Q. All right. But the -- and what's this device piece
- 16 called right here?
- 17 A. That's the threaded stud.
- 18 Q. The threaded stud. All of the cable underneath
- 19 there is uncoated, correct?
- 20 A. That's correct.
- 21 Q. All right. The -- as I understand it, you don't
- 22 provide to your customers any specific guidelines
- 23 as to how they would go about inspecting the

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1 cables, correct?

2 A. Prevent -- specific guidelines?

3 Q. For inspection, you don't give them what we just
4 talked about, the -- the protocol or procedure for
5 what to look out for when they're inspecting cables
6 or how to go about doing it? That's not -- that
7 does not come from you, correct?

8 A. Typically, the wire rope manufacturers provide that
9 information.

10 Q. And they provide that to whom?

11 A. Well, any -- any one in the industry that would --
12 that would need to -- to utilize it.

13 Q. Okay. So it's -- if Commercial Carriers wanted
14 that information, then they'd have to go to one of
15 the manufacturers to get it?

16 A. They requested information from us, you know, we
17 could, you know, try -- try to help them with
18 that.

19 (Discussion off the record.)

20 BY MR. LARSON:

21 Q. Go back on. Exhibit Q --

22 A. Okay.

23 Q. -- is the drawing?

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- 1 A. Okay.
- 2 Q. What does TS 146 -- strike that. What does
- 3 TS 14916-3 swage signify?
- 4 A. That might have been a part number that we utilized
- 5 at the -- at the -- at that time or something, a
- 6 part number that Delavan assigned to it or
- 7 Commercial. I'm not a hundred percent sure. We
- 8 had that assembly -- see what part number they
- 9 used. So that that's the assembly right there.
- 10 Yeah. They used a part number, C-1869. Yeah,
- 11 three inches of thread length. I'm not sure.
- 12 Q. You can't tell what -- at least right now, whether
- 13 that corresponds with one of Hanes Supply part
- 14 numbers?
- 15 A. Could have been another manufacturer of threaded
- 16 studs in the industry. I -- I don't know. I can't
- 17 -- I can't remember.
- 18 MR. LARSON: I think that's all the questions I have.
- 19 Thank you, sir.
- 20 MR. KOUSTMER: I just have a couple followups.
- 21 THE WITNESS: Okay.
- 22
- 23 RE-EXAMINATION BY MR. KOUSTMER:

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1

2 Q. When you were explaining to Counsel there how you
3 would check this sample we have --

4 A. Mm hmm snow.

5 Q. -- for a better word, for corrosion, did you ever
6 tell anyone at Commercial Carriers, Inc. how to
7 check for corrosion on one of these safety cables?

8 A. Did I explicitly give them a set of written
9 directions?

10 Q. Well, that would be one.

11 A. Or verbally?

12 Q. Did you ever do it in writing first?

13 A. No.

14 Q. Did you ever do it verbally?

15 A. No.

16 Q. Okay. You said the -- and if I'm wrong, just tell
17 me I'm wrong, but I think I heard you say that the
18 area that is most susceptible to corrosion would
19 be --

20 A. Mm hmm.

21 Q. -- would be -- let see if I have the exhibit.

22 MR. PAULUS: Is that it?

23 BY MR. KOUSTMER:

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- 1 Q. Okay.
- 2 A. Mm hmm.
- 3 Q. Would be this area on I that I'm circling, which is
- 4 right where -- and I forget again what you called
- 5 this when you were talking to Mr. Larson.
- 6 A. Threaded stud.
- 7 Q. The threaded stud. Okay. Where -- where the
- 8 threaded stud ends and the vinyl coating begins,
- 9 correct?
- 10 A. Mm hmm. Yes.
- 11 Q. Okay.
- 12 A. Yeah.
- 13 Q. And one of the ways I think you said that you check
- 14 for corrosion is to look at that area?
- 15 A. Right.
- 16 Q. Okay.
- 17 A. Visually.
- 18 Q. Visually. Exactly. So, if in this case we have an
- 19 Exhibit I -- which we don't think is one of
- 20 yours --
- 21 A. Mm hmm.
- 22 Q. -- they started the coating farther back from the
- 23 threaded stud?

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- 1 A. Mm hmm.
- 2 Q. Makes it easier to look for corrosion, doesn't it?
- 3 A. It's easier to look for corrosion but less
- 4 protection.
- 5 Q. Okay.
- 6 A. It is a tradeoff.
- 7 Q. Okay. But, in your case, when you were building
- 8 these for Commercial Carriers, Inc., you were
- 9 having the vinyl coating go all the way up to the
- 10 threaded stud, right? Close as possible, such as
- 11 this sample we got?
- 12 A. This sample right here, that -- you know, we're as
- 13 close as realistically possible, yet, it's still
- 14 visually inspectable. So we could -- you know, you
- 15 could see the, obviously, galvanizing going.
- 16 Q. Oh, okay. By twisting it around?
- 17 A. Yeah. Yeah.
- 18 Q. Okay. You say that you can see in there?
- 19 A. Yeah.
- 20 Q. Okay. And could you have done that -- this sample
- 21 we have it's, obviously, been frayed in some
- 22 manner -- if there -- it hadn't been frayed?
- 23 A. Excuse me? Can you see if it's frayed?

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- 1 Q. No, I see it's frayed. But I'm saying that -- that
2 you're saying that you can see by twisting this
3 around --
- 4 A. Mm hmm.
- 5 Q. -- the steel between the threaded stud and the
6 plastic coating?
- 7 A. Yes. Yes.
- 8 Q. But, that was never verbally or -- or in written
9 form provided to Commercial Carriers, Inc.?
- 10 A. No.
- 11 Q. Okay. Now, just so I'm clear on something, you
12 talked about service life. When you met with Mike
13 or anybody else at Commercial Carriers, Inc., did
14 they ever tell you how long they wanted the service
15 life of this product to be?
- 16 A. No.
- 17 Q. Okay. Did you know -- well, strike that. Did you
18 ask how long the service life was going to be?
- 19 A. No.
- 20 Q. Okay. So, when this was chosen, the quarter inch
21 galvanized aircraft cable, in your mind, you didn't
22 know how long they were going to have that up
23 there?

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1 A. There was never an explicit time stated.

2 Q. Okay. And did you tell them anything about what
3 was proper maintenance of these cables?

4 A. Did -- did we go over maintenance on the cables?
5 They purchased them, you know. No, we did not
6 discuss, you know, maintenance on the cables.

7 Q. Okay. So you didn't verbally discuss it and you
8 didn't provide them anything in writing?

9 A. We -- we do have things in writing as far as, you
10 know, our catalogs and our various handbooks and
11 things along that line. Now, again, I'll have to
12 review the time frame that was in there about what
13 was -- what was in those particular books. I'll
14 have to go back. But it's -- you know, people have
15 to, you know, have enough common sense to inspect
16 what the hell they're using.

17 MR. KOUSTMER: That's all I have, sir, thanks.

18 MR. LARSON: One last question.

19 THE WITNESS: Sure.

20

21 RE-EXAMINATION BY MR. LARSON:

22

23 Q. Did you ever tell anybody from Commercial Carriers

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- 1 in '94 or '95, that -- that the cables that they
2 were buying could corrode completely through
3 depending upon various factors as early as four
4 years out?
- 5 A. No. They never asked the question.
- 6 Q. And you -- whether asked or not -- didn't give
7 them any information as to how long they might
8 expect these cables to last out in the -- in the
9 environment?
- 10 A. No, that was never discussed by either party.
- 11 Q. All right. Exhibit U, which is from your more
12 current --
- 13 A. Catalog.
- 14 Q. -- catalog, it talks about, at least, some
15 differences between nylon and vinyl --
- 16 A. Mm hmm.
- 17 Q. -- in the middle section there?
- 18 A. Okay.
- 19 Q. Where did that information come from?
- 20 A. That was -- that information was provided by --
21 thanks. This is information provided by a
22 manufacturer, from a company called Carolina Steel
23 Wire who is since out of business. They used to be

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- 1 one of our vendors.
- 2 Q. When they were in business, were they a -- a
- 3 manufacturer of wire rope?
- 4 A. That's correct.
- 5 Q. There's an indication toward the bottom of that
- 6 paragraph, the second paragraph?
- 7 A. Mm hmm.
- 8 Q. It says generally compared with nylon, they,
- 9 referring to the vinyl coatings --
- 10 A. Mm hmm.
- 11 Q. -- are more flexible, have better resistance to
- 12 sunlight, and are less expensive?
- 13 A. Yeah.
- 14 Q. Is that?
- 15 A. Yeah, that's -- that's a very accurate statement
- 16 that PVC -- they put UV inhibitors into the plastic
- 17 and, you know, these things are out in sunlight,
- 18 and it's -- it's -- you know, it's -- it's -- it's
- 19 a good choice in that regard. And it is more
- 20 flexible. Nylon is stiffer. It's a harder
- 21 material.
- 22 Q. So, if you have a cable that is intended to -- and
- 23 is going to be out in the sunlight all the time

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1 while the sun's shining --

2 A. Uh-huh.

3 Q. -- that factor might -- according to this --

4 A. Yeah, according to this information.

5 Q. -- might draw one to consider the vinyl over nylon?

6 A. Yeah. It's a reasonable assumption, yeah. Yeah.

7 MR. LARSON: That's all I have. Thank you.

8 THE WITNESS: Yeah.

9 MR. KOUSTMER: Nothing.

10

11 EXAMINATION BY MR. PAULUS:

12

13 Q. I have -- I have one question.

14 A. You're supposed to be the good guy.

15 Q. Yeah. Mr. Larson --

16 MR. LARSON: Just wait.

17 BY MR. PAULUS:

18 Q. -- asked you a question I think was very similar to

19 this one. But, have you been told at any time or

20 been made aware at any time by any of your car

21 hauling customers whether the coating -- the

22 purpose of the coating on these hand cables is to

23 protect the vehicles that are cargo from scrapes

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1 against unprotected metal?

2 A. It's -- it's a consideration for the car holders.

3 I can't remember if they told me that, but it's --

4 it's a common sense scenario.

5 MR. KOUSTMER: Object to the question. Anything else?

6 MR. PAULUS: No.

7 MR. LARSON: Thanks, Mr. Hanes. Nice to meet you.

8 THE WITNESS: Yep. You, too.

9 * * * * *

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1 I hereby certify that I have read the
2 foregoing 114 pages and that they are a true and
3 accurate transcript of the testimony given by me in
4 the above-entitled action on February 12, 2003.

5

6

7

8

WILLIAM C. HANES

9

10

11

12

13 Sworn to before me this

14 day of , 2003.

15

16

17 Notary Public.

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23

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1 STATE OF NEW YORK)

2 SS:

3 COUNTY OF ERIE)

4

5 I, MARTIN S. WRIGHT, Certified Shorthand
6 Reporter, a Notary Public in and for the State of
7 New York, County of Erie, DO HEREBY CERTIFY that
8 the deposition of WILLIAM C. HANES was taken down
9 by me in a verbatim manner by means of Machine
10 Shorthand, on February 12, 2003. That the
11 deposition was then reduced in writing under my
12 direction. That the deposition was taken to be
13 used in the above-entitled action. That the said
14 deponent, before examination, was duly sworn by me
15 to testify to the truth, the whole truth and
16 nothing but the truth, relative to said action.

17 I further CERTIFY that the above-described
18 transcript constitutes a true and accurate and
19 complete transcript of the testimony.

20

21

22 MARTIN S. WRIGHT, CSR,
Notary Public.

23

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